

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
DEC 8 2016

OFFICE OF
MANAGING DIRECTOR

Brita D. Strandberg, Esq.
Harris, Wiltshire & Grannis, LLP
1919 M Street, N.W., Floor 8
Washington, DC 20036

Licensee/Applicant: **KDDI Global LLC**
Waiver and Refund: Late Payment Penalty Fiscal
Year (FY) FY 2013 Regulatory Fees
Disposition: **Denied** (47 U.S.C. § 159(c)(1), 31
U.S.C. § 3717; 47 C.F.R. §§ 1.3, 1.1157, 1.1160,
1.1164, 1.1166)
Station: N/A
Fees: Fiscal Year (FY) FY 2013 Late Payment
Penalty
Date Request Filed: Feb. 14, 2014
Date Regulatory Fees Paid: Feb. 14, 2014
Date Late Regulatory Fees Paid: Feb. 14, 2014
Fee Control No.: RROG-14-00015539

Dear Counsel:

This responds to Licensee's *Request*¹ for a refund or, in the alternative, a waiver of a portion of the Fiscal Year (FY) 2013 regulatory fee and the resulting statutory penalty and charges that accrued when Licensee failed to pay by the announced deadline the correct total annual regulatory fee. As we discuss below, we deny the *Request* because Licensee fails to demonstrate legal grounds or most extraordinary circumstances to waive collection of the penalty and assessed charges of collection or good cause and that the public interest is served to waive the fee.²

Background

On March 21, 2013, Licensee submitted a FCC Form 499-A reporting that in calendar year 2012 it had no revenues from which to pay the statutorily required annual regulatory fees. Thereafter, on "July 31, 2013, [Licensee] revised its 2013 Form 499-A for the first time ... and

¹ Letter from Brita D. Strandberg, Esq., Harris, Wiltshire & Grannis, LLP, 1919 M Street., N.W., Floor 8, Washington, DC 20036 to Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 445 12th St., S.W., Room TW-A325, Washington, D.C. 20554, Attn: Office of the Managing Director (Feb. 14, 2014)(*Request*).

² 47 C.F.R. §§ 1.1160, 1.1164, 1.1166.

on August 28, 2013, [Licensee filed] a second revised 2013 Form 499-A.”³ Each revision reported substantially different amounts in end user telecommunications revenues. As a result of these revisions, Licensee was required to pay regulatory fees that would be payable on or before September 20, 2013.

In that regard, under 47 U.S.C. § 159 and the Commission’s rules, we are required to “assess and collect regulatory fees” to recover the costs of the Commission’s regulatory activities,⁴ and when the required payment is received late or it is incomplete, to assess a penalty equal to “25 percent of the amount of the fee which was not paid in a timely manner.”⁵

On August 12, 2013, the Commission released Assessment and Collection of Regulatory Fees for Fiscal Year 2013, *Report and Order*, 28 FCC Rcd 12351 (2013) (*FY 2013 Fee Order*) establishing FY 2013 annual regulatory fee payment requirements, including those applicable to Licensee as an Interstate Telecommunications Service Provider (ITSP). In relevant part, the *FY 2013 Fee Order* established Licensee was required to pay a regulatory fee of \$.00347 per revenue dollar.⁶ Thereafter, on September 4, 2013, the Commission released Payment Methods and Procedures For Fiscal Year 2013 Regulatory Fee, *Public Notice* (DA 13-1796, Sep. 4, 2013) (*Public Notice*) informing regulate, including Licensee, that the required payment must be received no later than 11:59 PM, ET, September 20, 2013.⁷ The *Public Notice* reminded Licensee of an available *Fact Sheet* pertinent to ITSP annual fees and that

It is the responsibility of each fee payor to determine its regulatory fee obligation.

Fee Filer displays fee information associated with an FRN. Although the Commission makes every effort to assure the accuracy of the information contained in Fee Filer, the Commission cautions fee payors that any errors in the information contained in Fee Filer do not relieve fee payors of the responsibility to pay all fees correctly. Fee payors may make adjustments, corrections, additions, or deletions to the information contained in Fee Filer, if necessary.

Public Notice at 3.⁸ The *Public Notice* referred ITSP fee payors to the *Fact Sheet: What You Owe-Interstate Telecommunications Service Providers for FY 2013*⁹ (*Fact Sheet*) which provides, in part,

³ *Request* at 2.

⁴ 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

⁵ 47 U.S.C. §159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164 (“[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”).

⁶ *FY 2013 Fee Order*, Attachment C, 28 FCC Rcd at 12377-79; 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

⁷ See also Effective Date of FY 2013 Regulatory Fees and Multi-Year Wireless Fees, *Public Notice*, 28 FCC Rcd 12641 (2013).

⁸ <https://www.fcc.gov/document/fy-2013-payments-and-procedures-public-notice>.

⁹ https://apps.fcc.gov/edocs_public/attachmatch/DOC-323147A1.pdf.

After logging into Fee Filer, you will have an opportunity to edit your pre-completed ITSP worksheet. Upon completion of your edits, you will have an opportunity to pay electronically or generate a Form 159-E "Remittance Advice" voucher which you can use to mail in along with your payment. **PLEASE**

NOTE: Please note that if the Form 159-W worksheet is revised, it is the responsibility of the ITSP provider to file a revised 499-A form with USAC. Until this revised 499-A form is filed with USAC, the Commission will continue to use the 499-A form upon which the regulatory fee bill was created as the official regulatory fee amount due.

Fact Sheet at 4. Furthermore, the *Fact Sheet* admonishes regulatees that a carrier should make a regulatory fee payment even if it had failed to file an FCC Form 499-A,¹⁰ and it provides both a point of contact telephone number and a copy of the FCC Form 159-W from which to calculate the FY 2013 regulatory fee.

Licensee acknowledges it filed revisions on July 31, 2013, and August 28, 2013,¹¹ before the fee payment deadline. In these revisions, Licensee reported amounts in end user telecommunications revenues that required payment of a fee. Even so, Licensee failed to make its payment on September 20, 2013. Later, on October 8, 2013, in response to Licensee's submitted revised FCC Forms 499-A, USAC wrote Licensee's counsel to acknowledge receipt of both revised FCC Forms 499-A, and to explain, "USAC will use the information reported on [Licensee's] second revised 2013 FCC Form 499-A to recalculate the [Licensee's Annual and Quarterly] True Up[; however,] USAC ... reserves all rights to take further action as USAC deems necessary."¹² On January 30, 2014, the Commission provided Licensee with a demand for payment of the delinquent regulatory fee and accrued charges.¹³ On February 14, 2014, Licensee paid the FY 2013 regulatory fee and accrued charges, and then submitted its *Request* that we refund or, in the alternative, waive, the Fiscal Year (FY) 2013 regulatory fees and the late payment charges. Licensee asserted, it does not owe a regulatory fee, which is based on end user revenue, because on March 21, 2013, it "reported no end user revenue."¹⁴

Licensee asserts, the "Commission's demand for payment ... contravenes the notice and publication requirements of the Administrative Procedures Act [because] the pertinent notice ... the Commission's Regulatory Fact Sheet ... informs contributors that the Commission will assess ... fees through its 'Fee Filer' system. Importantly, that notice states that '[t]he ITSP bill ... in Fee Filer is based on information that was provided on FCC Form 499-A ... processed through July 30, 2013.'"¹⁵ Furthermore, Licensee asserts, its "Forms 499-A 'processed through July 30, 2013' provided for *no* regulatory fee liability. ... To now assess regulatory fees ... deviates from the Commission's publicly noticed procedures[; therefore, t]he fees ... must ... be

¹⁰ *Fact Sheet* at 6-7.

¹¹ *Request* at 2.

¹² Letter from Universal Service Administrative Company, 700 12th St., N.W., Suite 900, Washington, DC 20005 to Brita Strandberg, Esq., Wiltshire & Grannis LLP, 1200 18th St., N.W., Suite 1200, Washington, D.C. 20036 (Oct. 8, 2013) (*USAC letter*).

¹³ Demand Letter from FCC, Washington, DC 20554 to KDDI Global L.L.C., 192 Route 18 South, Suite 104, East Brunswick, NJ 08816 (1/30/2014).

¹⁴ *Request* at 2.

¹⁵ *Id.*

reversed and [Licensee's] payment immediately refunded."¹⁶ Licensee adds, because it "plainly owed no regulatory fees [because Licensee did not report] assessable revenue [on September 20, 2013]."¹⁷ Licensee asserts, in the alternative, the late fees should be waived, because it was not possible to have paid the fee in a timely manner.¹⁸

Standards

Licensees are expected to know the Commission's rules and procedures¹⁹ for paying the annual regulatory fees, filing a timely and complete petition to defer payment, and filing a request for waiver. Also, Licensees are expected to know the consequences of failing to pay an annual regulatory fee in a timely manner.

In establishing the regulatory fee program mandated by Congress,²⁰ the Commission set out the relevant schedules of the annual fees and established procedures for, among other matters, payment, waivers, reductions, and deferral, refunds, error claims, and penalties.²¹

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees"²² to recover the costs of the Commission's regulatory activities,²³ and when the required payment is received late or it is incomplete, and "not excused by bank error, [to assess] a 25 percent penalty of the amount of the fee ... which [is] not paid in a timely manner."²⁴ A timely fee payment is one received at the Commission's lockbox bank by the due date.²⁵

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. The Commission noted in its *FY 2013 Fee Order*,²⁶

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 47 C.F.R. § 0.406; *see* Life on the Way Communications, Inc., *Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

²⁰ *See* 47 C.F.R. § 1.1151.

²¹ *See* 47 C.F.R. Part 1, Subpart G.

²² *FY 2013 Fee Order*; *see also e.g.*, Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812 (2011) (*2011 Regulatory Fee Order*); Assessment and Collection of Regulatory Fees for Fiscal Year 2015, *Report and Order and Further Notice of Proposed Rulemaking*, 30 FCC Rcd 10268 (2015) (*2015 Regulatory Fee Order*).

²³ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

²⁴ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

²⁵ 47 C.F.R. § 1.1164.

²⁶ *FY 2013 Fee Order* at 12369-70, ¶ 54.

To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the due date of regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's rules and in the Debt Collection Improvement Act of 1996 (DCIA). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the payor will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner [footnotes deleted].

Under 47 C.F.R. § 54.711, contributors such as Licensee are required to file the Telecommunications Reporting Worksheet quarterly and annually, *i.e.*, FCC Forms 499-Q and 499-A. Inaccurate or untruthful information in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18, United States Code. The Commission's rule requires an executive officer of the contributor must certify to the truth and accuracy of the historical information.²⁷ Instructions to complete the FCC Form 499-A worksheet include, in part, admonitions that a contributor is obligated to file revisions, if there is any change in certain listed types of information and that "Filers must also submit revised worksheets if they discover an error in their revenue data." Since companies generally close their books for financial purposes by the end of March, such filers should base the April filing on closed books."²⁸

Under 47 U.S.C. § 159(c)(1), if the full amount is not received at the Commission's lockbox bank by the due date, a late payment penalty of 25 percent of the amount not paid accrues automatically. Specific to payment and penalties, "[a]ny late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164,"²⁹ which provides in relevant part, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... not paid in a timely manner."³⁰ Thus, after the deadline, the full amount due includes the 25 percent late payment penalty³¹ and, if the debt remains unpaid, the accrued charges of collection, interest, and penalties.³² If a regulatee tenders less than the full amount owed, it is a partial payment, which is applied to the amount owed as set forth in 47 C.F.R. § 1.1940(f)--first to the penalties and

²⁷ 47 C.F.R. § 54.711(a).

²⁸ 2013 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), March 2013, p. 8 (*FCC Form 499-A Instructions*).

²⁹ 47 C.F.R. § 1.1157(c)(1).

³⁰ 47 C.F.R. § 1.1164.

³¹ *Id.*

³² 31 U.S.C. § 3717.

accrued charges, and then to the principal amount owed.³³ Afterwards, any unpaid portion is a delinquent regulatory fee that incurs interest, penalties, and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. Moreover, until the full amount is paid or satisfactory arrangements are made, the licensee remains a delinquent debtor subject to the Commission's administrative sanctions of dismissal as set forth at 47 C.F.R. §§ 1.1164(e)³⁴ and 1.1910.

Under 47 C.F.R. §§1.1160(a) and 1.1166, a refund may be made only under specific circumstances, e.g., "[w]hen no regulatory fee is required or an excessive fee has been paid" or "[w]hen a waiver is granted in accordance with § 1.1166."³⁵ Under § 1.1166, fees may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.³⁶ An applicant seeking a waiver of the penalty and assessed charges has the burden of demonstrating compelling and "most extraordinary circumstances"³⁷ to justify waiver of the penalty.

Discussion

Licensee does not present a valid ground either to refund or to waive the fee and late payment charges. Under 47 C.F.R. § 1.1160, a refund is appropriate under only specific limited circumstances,³⁸ such as where either (a) no fee is due or (b) a waiver of the fee has been granted as provided for at 47 C.F.R. § 1.1166,³⁹ which requires a showing of both good cause and that the waiver would promote the public interest. Licensee failed to make either point.

Licensee asserts that no fee was due on September 20, 2013,⁴⁰ simply because on March 21, 2013, it reported no annual revenues for calendar year 2012 on the FCC Form 499-A.⁴¹ Seemingly, Licensee bases this novel approach for avoiding payment of the regulatory fee on its misreading of the Commission's *FY 2013 Fee Order*, the *Fact Sheet*, and the *Public Notice* and ignoring its revenue information at hand to file the August 28, 2013, revised FCC Form 499-A. Licensee bases its theory on our warning in the *Fact Sheet* that the "bill ... accessible in Fee Filer

³³ 47 C.F.R. §§ 1.1940(f) ("When a debt is paid in partial ... payments, amounts received ... shall be applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal."), 1.1157(c)(1), 1.1164(c).

³⁴ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), 1.1910.

³⁵ 47 C.F.R. § 1.1160(a)(1) & (3).

³⁶ 47 C.F.R. § 1.1166 ("fees established by sections 1.1152 through 1.1156 may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."); cf. 47 C.F.R. § 1.3.

³⁷ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589, ¶ 8 (2004) (*McLeodUSA Telecommunications*) (denying the request for waiver of 25 percent penalty).

³⁸ 47 C.F.R. § 1.1160 ("(a) Regulatory fees will be refunded, upon request, only in the following instances: (1) When no regulatory fee is required or an excessive fee has been paid. In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. ... (3) When a waiver is granted in accordance with § 1.1166."

³⁹ 47 C.F.R. § 1.1166 ("fees ... may be waived ... on a case-by-case basis, where good cause is shown and where waiver ... would promote the public interest.").

⁴⁰ September 20, 2013, was the last day to pay the annual regulatory fee.

⁴¹ Request at 2 (Licensee "filed its initial 2013 Form 499-A on March 21, 2013 ... report[ing] no end user revenue ... therefore [Licensee] owed no regulatory fees").

is based on information ... that was due on April 1, 2013, and [that] includes revised 499-A filings processed through July 30, 2013.”⁴² From this, Licensee argues, because it did not file its revisions until July 31, 2013, and August 28, 2013, and USAC did not accept the revisions until October 8, 2013, that revised revenue information cannot be used to calculate the fee.⁴³ Indeed, Licensee postulates, the whole of the *Fact Sheet* provides Administrative Procedures Act notice that Licensee will follow, and as such, Licensee’s “reported revenue” results “[o]nly when USAC ‘accepted ... for processing’ [Licensee’s] second revised Form 499-A,”⁴⁴ which was October 8, 2013.⁴⁵ We reject this approach.

First, the fee requirement is clear. Under 47 U.S.C. § 159 and 47 C.F.R. § 1.1151, the Commission assesses and collects regulatory fees to recover the costs of the Commission’s regulatory activities, and Licensee’s FY 2013 regulatory fee is \$.00347 per revenue dollar as set forth in *FY 2013 Fee Order*.⁴⁶ Licensee did not pay the proper amount on time, hence it was delinquent. When notified of its delinquency, Licensee points to a portion of the annual *Fact Sheet* to suggest that the Commission should refund or, in the alternative, waive the fee and charges resulting from Licensee’s failure to pay the fee when it was due. Licensee’s reliance on the *Fact Sheet* is misplaced.

That *Fact Sheet* does not permit a regulatee to underpay its required annual regulatory fee by under reporting revenue on a first-filed FCC Form 499-A. Rather that *Fact Sheet* plainly advises all regulatees that if they submitted a revision that was processed after July 30, 2013, that revised information is not included in the ITSP bill accessible in Fee Filer, so it is necessary to edit that bill. Indeed, the *Fact Sheet* continues with an explanation to regulatees that after they “have an opportunity to edit [the] pre-completed ITSP worksheet[, and u]pon completion of [the] edits, [regulatees] will have an opportunity to pay electronically or generate a Form 159-E ‘Remittance Advice’ voucher to [provide] with ... payment.”⁴⁷ This is entirely consistent with the warning that the pre-completed ITSP worksheet does not reflect changes that may result from revisions a regulatee may have filed after July 30, 2013. Further, the *Fact Sheet* states, “**PLEASE NOTE:** Please note that if the Form 159-W worksheet is revised, it is the responsibility of the ITSP provider to file a revised 499-A form with USAC.”⁴⁸ The *Fact Sheet* also admonishes regulatees that they should make a regulatory fee payment even if they failed to file an FCC Form 499-A.⁴⁹ In addition to the *Fact Sheet*, the *Public Notice* admonishes “[i]t is the responsibility of each fee payor to determine its regulatory fee obligation.”⁵⁰ Continuing, the *Public Notice* warns, “[a]lthough the Commission makes every effort to assure the accuracy of the information contained in Fee Filer, the Commission cautions fee payors that any errors in the information contained in Fee Filer do not relieve fee payors of the responsibility to pay all fees correctly.”⁵¹ Neither the *FY 2013 Fee Order*, nor the *Fact Sheet*, nor the *Public Notice* support

⁴² *Fact Sheet* at 3; *Request* at 3.

⁴³ *Request* at 3.

⁴⁴ *Id.*

⁴⁵ *Id.* at 2.

⁴⁶ *FY 2013 Fee Order*, Attachment C, 28 FCC Rcd at 12377-79; 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

⁴⁷ *Fact Sheet* at 4.

⁴⁸ *Id.*

⁴⁹ *Id.* at 6-7.

⁵⁰ *Public Notice* at 3.

⁵¹ *Id.*

Licensee's assertion that it can under-pay the regulatory fee with impunity simply by relying on incorrect revenue information it inserted on the initial FCC Form 499-A. Moreover, Licensee's assertion that "the penalties must be reversed, as the underlying fee could only have been calculated and imposed after the ... window for regulatory fee payment had closed"⁵² is equally misplaced. The *Fact Sheet*, which Licensee acknowledges provided notice, admonished all regulatees that they would "have an opportunity to edit [the] pre-completed ITSP worksheet,"⁵³ that they should "review the information on the 159-W worksheet to ensure that the data used to calculate the fee amount is correct,"⁵⁴ and that even if they had not filed a Form 499-A, they had to pay the regulatory fee.⁵⁵ Indeed, the *Fact Sheet* references *FCC Form 499-A Instructions*,⁵⁶ which admonishes filers that they "must ... submit revised worksheets if they discover an error in their revenue data."⁵⁷ The undisputed facts are that Licensee erred in its first FCC Form 499-A, and it filed two revisions. Moreover, even though Licensee knew it had increased its reported revenues to require payment of a regulatory fee, it failed to access the Commission's fee filer in a timely manner to make a proper payment. Licensee has not established a legal ground to waive the 25 percent penalty imposed under 47 C.F.R. §§ 1.1157(c)(1) and 1.1164 because the payment was late.

We note, Licensee's assertion that the demand for payment contravenes the notice and publication requirements of the Administrative Procedures Act (APA) because the *Fact Sheet* is incomplete is without merit. First, as we have demonstrated, the information in the *Fact Sheet* is complete. More importantly, as we set out in detail above, we have complied with all APA requirements. Under 47 U.S.C. § 159 and the Commission's implementing rules, we "assess and collect regulatory fees"⁵⁸ to recover the costs of the Commission's regulatory activities,⁵⁹ and when the required payment is received late or it is incomplete, and "not excused by bank error, [to assess] a 25 percent penalty of the amount of the fee ... which [is] not paid in a timely manner."⁶⁰ A timely fee payment is one received at the Commission's lockbox bank by the due date.⁶¹ Furthermore, when payment is late, we assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. The *FY 2013 Fee Order* announced the fee amount and iterated enforcement sanctions for late and incomplete payment.⁶² The Commission's rules and rulemaking process in the matter are not in question.

⁵² *Request* at 2.

⁵³ *Fact Sheet* at 4.

⁵⁴ *Id.* at 5.

⁵⁵ *Id.* at 6-7.

⁵⁶ *Id.* at 5.

⁵⁷ *FCC Form 499-A Instructions* at 8.

⁵⁸ *FY 2013 Fee Order*.

⁵⁹ 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

⁶⁰ 47 U.S.C. §159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

⁶¹ 47 C.F.R. § 1.1164.

⁶² *FY 2013 Fee Order* at 12369-70, ¶ 54.

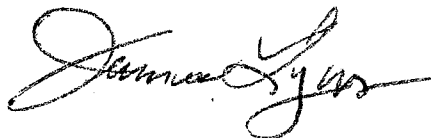
Turning to Licensee's requested waiver, Licensee failed to establish either of the two required elements—good cause and that the public interest is served. The facts show with clarity that Licensee had its revised revenue information before the September 20, 2013, due date, yet it failed to follow *Fact Sheet* guidance to "electronically edit the pre-completed ITSP worksheet."⁶³ The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice. Here, Licensee created the error.

We deny Licensee's *Request* for a refund or, in the alternative, a waiver.

Licensee requested confidential treatment of the *Request*. As set forth at 47 C.F.R. § 0.459(d)(3), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records; however, in the meantime, we treat the records confidentially.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in dark ink, appearing to read "James Lyons", with a stylized flourish at the end.

James Lyons
Acting Chief Financial Officer

⁶³ *Fact Sheet* at 4.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 25 2017

OFFICE OF
MANAGING DIRECTOR

Dennis P. Corbett, Esquire
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Licensee/Applicant: Ramar Communications, Inc.
Waiver/Refund Request: Regulatory Fees and Late
Payment Penalty
Disposition: Dismissed and Denied (47 U.S.C. §
159; 31 U.S.C. § 1301; 47 C.F.R. §§ 1.2, 1.3, 1.44,
1.1157(c)(1), 1.1164, 1.1166, 1.1910)
Fee: Fiscal Year (FY) 2014 Regulatory Fee and
Regulatory Fee Late Payment Penalties
Station(s): KUPT(TV) and KTEL-TV
Dates of Payment (Partial): Sep. 19, 2014
Date Request Submitted: Nov. 24, 2014
Fee Control No.: RROG 15-00015831

Dear Counsel:

This responds to Ramar Communications, Inc. (Licensee's) *Requests*¹ submitted in response to two demand for payment letters dated October 28, 2014, concerning invoice numbers R14T027431 1 and R14T083707 1, that requested the "Commission [change its] regulatory fee records ... to reflect the television satellite status of [station call signs KUPT TV and KTEL-TV] and that the Demand Letter[s] be rescinded."² As we discuss below, we dismiss and deny the *Requests* on alternative grounds. First, we dismiss *Request I* because it is moot and, in the alternative, we dismiss both *Requests*, which are applications, because Licensee is delinquent in paying a debt to the Commission and Licensee improperly combined separate requests for relief in a single pleading. Next, in the alternative, we deny both *Requests* because Licensee failed to establish that its two stations are television satellite stations, that the Commission should change its records, or that the Commission should waive collection of the fees.³ As a procedural matter, it is apparent from other email correspondence to Commission staff that Licensee's counsel has changed his mailing address; however, counsel did not provide an address change related to this proceeding⁴ or in the Commission Registration System (CORES).⁵

¹ Email from Dennis P. Corbett (DCorbett@lermansenter.com) to ARINQUIRIES (Nov 24, 2014) (*Request I*) with Attachment A, Advanced TV Factbook Listing for KUPT (TV), Attachment B, BIA Listing for KUPT (TV); email from Dennis P. Corbett (DCorbett@lermansenter.com) to ARINQUIRIES (Nov. 24, 2014) (*Request II*) with Attachment A, Advanced TV Factbook Listing for KETL-TV, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report.

² *Request I* at 2, *Request II* at 2.

³ 47 C.F.R. § 1.1166.

⁴ See 47 C.F.R. § 1.65.

In addition to the *Requests*, Licensee submitted a letter⁶ (*Letter*) to Treasury and Pioneer Credit Recovery, Inc., requesting “dismissal of th[e collection action] at Treasury while the underlying issues are reviewed by the FCC.”⁷ In part, *Licensee* asserted it had a “challenge to the asserted regulatory fees and penalties” before the Commission, thus the Commission was “premature [in its] referral of th[e debt] to Treasury.”⁸ Our detailed response to Treasury recommended continued collection action.

Background

The Commission’s records show that Licensee is delinquent in paying a Fiscal Year (FY) 2013 regulatory fee, which debt has been referred to the U.S. Department of the Treasury for collection action. Additionally, the Commission’s records show that on June 22, 2016, licensee paid the balance owed on invoice R14T083707, which is the subject debt in the Demand Letter discussed at *Request II*.

In *Request I*, Licensee asserts, the “FCC Demand Letter dated October 28, 2014 (Bill Number R14T027431 1) ... which seeks a payment of \$31,831.25 in addition to regulatory fees and penalties ... relating to the regulatory fee payment cycle ending September 23, 2014[during which period Licensee] remitted to the FCC a regulatory fee payment ... of \$1,550 ... is in error [based on the following: that f]ormal FCC satellite exemptions are neither needed ... nor issued ... in Designated Market Areas ... where, as here, the predicted signal coverage contour ... has no cognizable overlap [and i]n such cases, a satellite listing ... by Warren Communications News provides direct evidence of a station’s satellite status[, and] the [attached] screen shot from the Advanced TV Factbook recit[es] the Station’s status ... as a satellite of KMYL-LD[, and] satellite status is confirmed by [the attached] BIA record[, and] the satellite is licensed to Hobbs, a much smaller community [where] KUPT (TV) is the only full-powered television station licensed to Hobbs[; moreover,] Television satellites are particularly common in the Albuquerque DMA ... To [Licensee’s] knowledge, these other DMA satellite stations ... pay FCC regulatory fees as satellites ... all similarly situated stations owners are to be treated similarly ... for all of

⁵ 47 C.F.R. § 1.8002. Licensee’s contact address reported in CORES is: 2001 L Street, NW, Suite 400, Washington, DC 20036.

⁶ Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20006-1809 to Department of the Treasury, Debt Management Services, Post Office Box 830794, Birmingham, AL 35283-0794 (Mar. 17, 2016) (*Letter*) with attachments (A) letter from Department of the Treasury, Bureau of the Fiscal Service, P.O. Box 830794, Birmingham, AL 35283-0794 to Ramar Communications Inc., 2000 K Street, NW, Suite 600, Washington, DC 20006 (Feb. 22, 2016) (*Feb. 22, 2016, Treasury Demand*) and (B) email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of *Feb. 22, 2016, Treasury Demand*; Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2001 L Street NW, Suite 400, Washington, DC 20036 to Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 (Jun. 29, 2016) (*Letter II*) with Attachment A, Letter from Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 to Ramar Communications, Atty Dennis P Corbett, 2000 K St., NW, Ste 600, Washington, DC 20006 (Jun. 2, 2016), email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of *Feb. 22, 2016, Treasury Demand*.

⁷ *Letter*.

⁸ *Id.*

these reasons [Licensee] requests that Commission regulatory fee records be changed to reflect the television satellite status ... and ... the Demand Letter be rescinded.”⁹

Also, on November 24, 2014, Licensee submitted *Request II*, which presented identical information concerning Bill Number BRF R 14T083707 1 related to call sign KTEL-TV.

On January 30, 2013, the Commission demanded that Licensee pay \$22,179.17 as is set forth in Bill No. R13T027431 (*FY 2013 Demand I*)¹⁰ (a debt currently at Treasury for collection), and the Commission provided Licensee with notice that it had 15 days in which to request an opportunity to inspect or copy debt-related records, to request an installment payment plan, or, as permitted by FCC rules, seek agency review of the basis of the debt. Specifically, the notice explained, to exercise “any of these rights, [the debtor] must, within the allowed time, deliver to the FCC’s address ... a written request (letter or email) specifying the nature of the request and providing relevant verified supporting documentation. After 15-days, [the debtor] will be deemed to have waived any right not exercised, and any notice that [debtor] may receive later does not extend or renew that period.”¹¹ On the same date, the Commission provided a demand for payment with the same notifications for the payment of Bill No. R13T083707 1,¹² (which Licensee paid on September 19, 2013). On October 28, 2014, the Commission demanded payment of Bill No. BRF R14T027431 1¹³ (at Treasury for collection) and Bill No. BRF R14T083707 1.¹⁴ These two Demand Letters provided Licensee with 30 days to exercise a right by written request specifying the nature of the request and providing relevant verified supporting documentation.

On March 7, 2016, Licensee submitted to the Commission’s staff an *Email* asserting that it recently “learned that the Commission’s online LMS system [would] not accept [Licensee’s] application[, and that] the block [was] related to [Licensee’s delinquent] regulatory fee bills.”¹⁵ Continuing, Licensee asserted it “has consistently been paying regulatory fees for KTEL-TV and KUPT based on their recognized status within the television industry as satellite stations and that [Licensee] has a long standing as yet unresolved challenge to the FCC’s position that [the] two stations should pay regulatory fees as if they were full power *non-satellite* stations.”¹⁶ Licensee asserted, the so-called challenge has been of “substantial duration,” and as such, under 47 C.F.R. § 1.1910(b)(3)(i), the Commission’s procedure to withhold action on any application filed by a delinquent debtor should be deferred.¹⁷ Licensee asserted that from its “informal discussions with [the Commission’s] Media Bureau,” Licensee “believe[s] that [the Commission] staff is taking the position that the only television satellite stations entitled to the

⁹ *Request I* at 1-2.

¹⁰ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Jan. 30, 2014)(*FY 2013 Demand Letter I*).

¹¹ *Id.*

¹² Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Jan. 30, 2014)(*FY 2013 Demand Letter II*).

¹³ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Oct. 28, 2014)(*FY 2014 Demand Letter I*).

¹⁴ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Oct. 28, 2014)(*FY 2014 Demand Letter II*).

¹⁵ *Email* at 1.

¹⁶ *Id.*

¹⁷ *Id.*

benefit of the lesser satellite fees are those to which the Commission has issued a formal [waiver under 47 C.F.R. §] 73.3555 Note 5.”¹⁸ Licensee, however, asserts it does not “need [a] Note 5 duopoly waiver” and it is Licensee’s “understanding that the Commission has historically consulted industry publications to determine whether a particular station qualifies as a satellite [and Licensee’s two stations] are listed as satellite stations in BIA’s database.”¹⁹

Licensee asserts, the statement, “stations designated as Television Satellite Stations in the 2002 Edition of the *Television and Cable Factbook* ... are subject to the fee applicable to Television Satellite Stations,” in Assessment and Collection of Regulatory Fees for Fiscal Year 2002, *Report and Order*, 17 FCC Rcd 13203, 13268 (2002) is “dispositive here.”²⁰ Next, Licensee asserts that its “request[] that FCC staff review broadly the Commission’s regulatory fee database to determine the extent to which the universe of satellite stations that pay satellite fees ... also encompasses non-Note 5 stations that are listed as satellites in industry publications.”²¹ Licensee did not provide evidence supporting its speculation of disparate fee payment, rather Licensee asserted in the *Requests* and *Email* it is “reliant on the staff’s obtaining this information,” and from that, Licensee posits it is entitled to pay only a portion of the required annual regulatory fees for its stations.²²

Licensee also “suggests that lesser satellite fees for [the two stations] are appropriate and equitable, and [lower fees] will facilitate [the stations] continued provision of service to the public.” Licensee asserts “KTEL-TV is ... the only full-power station licensed to Carlsbad, New Mexico” and “KUPT is currently the only full-power station licensed to Hobbs, New Mexico.”²³ Licensee “is aware of no reason why similarly situated satellite stations should be treated differently based solely on the happenstance of signal contour overlap and the need for a Note 5 duopoly waiver.”²⁴ Finally, Licensee asserts, “the integrity of satellite listings in industry publications like BIA is self-policing [and p]resumably, that real world reality is what led the Commission in the 2002 R&O to utilize the industry publication test”²⁵

Rebutting Licensee’s assertions, the relevant *Television & Cable Factbook*, Volume 81, pp. A-843 and A-846 (2013) and *Television & Cable Factbook*, Volume 82, pp. A-849 and A-846 (2014) do not report either station KUPT or KTEL-TV as a satellite station.

The basis of each delinquent debt is the unpaid portion of an annual regulatory fee remaining after Licensee unilaterally decided to pay a smaller fee amount. Under 47 U.S.C. § 159 and the Commission’s rules, we are required to “assess and collect regulatory fees” to recover the costs of the Commission’s regulatory activities.²⁶ When the required payment is received late or it is incomplete, under the law, the Commission automatically assesses a penalty

¹⁸ *Id.* at 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 2-3.

²² *Id.* at 3.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

equal to “25 percent of the amount of the fee which was not paid in a timely manner.”²⁷ Specifically, “[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”²⁸

Standards

The Commission’s orders and rules include the well-established procedures for assessing and collecting annual regulatory fees, and procedures for filing applications at the Commission including, for example, petitions for declaratory relief, petitions to defer, waive, reduce, or refund a payment, and other matters seeking Commission action, and the consequences when a licensee fails to comply.²⁹ Relevant to television station regulatory fees, television licensee are subject to the regulatory fee payment required for their class of station and market unless the station is a commonly owned television satellite station, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmits programming of the primary station.³⁰ A television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission’s rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned.³¹ Licensees are expected to know these rules and procedures,³² and the consequences for non-compliance, including nonpayment of a debt. In that regard, a debt is “any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency.”³³

Relevant to the due date for paying the fee, each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. September 20, 2013, and September 23, 2014, respectively, were the deadlines for paying the FY 2013 and FY 2014 annual regulatory fees.³⁴ For example, concerning the deadline, the Commission’s *2014 Regulatory Fee Order*, 30 FCC Rcd at 10286, ¶ 50, warned,

²⁷ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

²⁸ 47 C.F.R. § 1.1164.

²⁹ See 47 C.F.R. Part 1, *e.g.*, Subparts A, G, and O, 47 C.F.R. §§ 1.2, 1.43, 1.44, 1.1153, 1.1164, 1.1166.

³⁰ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 F.C.C. Rcd. 5333, ¶ 82 (1994) (“Congress assessed the same fee for both commercial full operational and commercial satellite television stations”); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 F.C.C. Rcd. 13512, 13534 (1995) (“Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission’s Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations”); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 FCC Rcd 9868, 9936 (1999).

³¹ Television Satellite Stations Review of Policy Rules, *Report and Order*, 6 FCC Rcd 4212, ¶ 3 (1991) (*Satellite Station Review*).

³² 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc., Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

³³ 31 U.S.C. § 3701(b)(1); accord 31 C.F.R. § 900.2; 47 C.F.R. § 1.1901(e).

³⁴ See FY 2013 Regulatory Fees Due No Later Than September 20, 2013, 11:59 pm Eastern Time (ET), *Public Notice*, DA 13-1796. (Sep. 4, 2013); FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 PM Eastern Time (ET), *Public Notice*, DA 14-1261 (Aug. 29, 2014).

To be considered timely, regulatory fee payments must be made received and stamped at the lockbox bank by the payment due date for regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline for filing these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's rules, which generally requires the Commission to withhold action on "applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission" and in the ... (DCIA). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In the case of partial payments (underpayments) of regulatory fees, the payor will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner. [Footnotes deleted.]

After the deadline, the full amount of the regulatory fee includes the 25% late payment penalty³⁵ and, if the debt remains unpaid, the balance owed includes the accrued charges of collection, interest, and penalties.

If a regulatee tenders less than the full amount owed, it is a partial payment, which is applied to the amount owed as set forth in 47 C.F.R. § 1.1940(f)--first to the penalties and accrued charges, and then to the principal amount owed.³⁶ Afterwards, any unpaid portion is a delinquent regulatory fee that incurs interest, penalties, and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. Moreover, until the full amount is paid or satisfactory arrangements are made, the licensee remains a delinquent debtor subject to the Commission's administrative sanctions of dismissal as set forth at 47 C.F.R. §§ 1.1164(e)³⁷ and 1.1910.

Under the Commission's rules, an *application* includes, in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.³⁸ A debt is

³⁵ 47 C.F.R. § 1.1164 ("[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner.").

³⁶ 47 C.F.R. §§ 1.1940(f) ("When a debt is paid in partial ... payments, amounts received ... shall be applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal."), 1.1157(c)(1), 1.1164(c).

³⁷ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), 1.1910.

³⁸ 47 C.F.R. § 1.1901(d).

delinquent when it “has not been paid by the date specified.”³⁹ Upon filing, the Commission will examine an “application (including a petition for reconsideration or any application for review of a fee determination) ... to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits[, and a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination ... until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made and ... the application may be dismissed.”⁴⁰ Furthermore, “[i]f a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.”⁴¹

In addition to the examination to determine whether the applicant is delinquent in paying a debt owed to the Commission, the Commission will review the submission to determine compliance with the Commission’s rules of practice and procedure. For example, and relevant here, an applicant may not combine requests requiring action by any person or persons pursuant to delegated authority with requests for action by any other person or persons acting pursuant to delegated authority.⁴²

An applicant seeking a waiver, reduction, or deferral of a fee must comply with 47 C.F.R. § 1.1166, which provides,

The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. (1) If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission’s lockbox bank at the address for the appropriate service set forth in §§1.1152 through 1.1156 of this subpart. (2) If no fee payment is submitted, the request should be filed with the Commission’s Secretary.

An applicant seeking a waiver of the penalty and assessed charges has the burden of demonstrating compelling and “most extraordinary circumstances”⁴³ that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission’s regulatory action.⁴⁴

³⁹ 47 C.F.R. § 1.1901(i).

⁴⁰ 47 C.F.R. § 1.1910(a) & (b).

⁴¹ 47 C.F.R. § 1.1910(b)(3).

⁴² 47 C.F.R. § 1.44.

⁴³ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589, ¶ 8 (2004) (denying the request for waiver of 25 percent penalty).

⁴⁴ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 (“The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.”). *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5354 ¶ 65 (1994),

Under 47 C.F.R. § 1.2, a regulatee may request a declaratory ruling to remove an uncertainty.

Discussion

Licensee is delinquent in paying debts;
therefore, the applications are dismissed.

Licensee asks the Commission reduce the regulatory fees due for the stations of their class and market to that of television satellite stations. To achieve that end, the Commission would have to determine that Licensee's two stations are commonly owned television satellite stations, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmit programming of the primary station.⁴⁵ Thus, it would be necessary for the Commission first to make a determination declaring an exception to its rule,⁴⁶ then grant the substance of the *Requests*, and thereafter act to change regulatory fee records to reflect that the annual regulatory fees for the two stations are less than the fees for the respective class of station and market. Aside from the requirements set forth at 47 C.F.R. § 1.3 to show good cause, which Licensee fails to establish, these multiple procedures implicate different procedural rules and multiple bureaus and offices of the Commission. Moreover, despite the manner in which Licensee submitted the *Requests*, by email in response to Demand Letters to pay delinquent debts,⁴⁷ the submissions are applications for relief within the meaning of our rule at 47 C.F.R. § 1.1901(d), *i.e.*, a request for assistance, relief, declaratory ruling or a decision by the Commission or on delegated authority. We note, Licensee does not present a valid challenge to the legal fee determination as set forth at 47 C.F.R. § 1.1167.⁴⁸

As such, our first task is to examine the application to determine whether Licensee has paid the appropriate regulatory fees or is delinquent in its debts owed to the Commission.⁴⁹ We find from our records that Licensee is delinquent in paying regulatory fees, which are debts owed the United States as prescribed by statute⁵⁰ and codified at 47 C.F.R. § 1.1153. Looking further,

recon. granted in part, 10 FCC Rcd 12759 (1995) (1994 Report and Order); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26466, ¶ 5 (2003) (*Phoenix Broadcasting, Inc.*).

⁴⁵ See *Satellite Station Review; Report and Order*, 10 FCC Rcd 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); *Assessment & Collection of Regulatory Fees for Fiscal Year 1999, Report and Order*, 14 FCC Rcd 9868, 9936 (1999).

⁴⁶ See 47 C.F.R. § 1.3.

⁴⁷ See 47 C.F.R. § 1.1911.

⁴⁸ 47 C.F.R. § 1.1167(a) Challenges to determinations or an insufficient regulatory fee payment or delinquent fees should be made in writing. A challenge to a determination that a party is delinquent in paying a standard regulatory fee must be accompanied by suitable proof that the fee had been paid or waived (deferred from payment during the period in question), or by the required regulatory payment and any assessed penalty payment (see § 1.1164(c) of this subpart).

⁴⁹ 47 C.F.R. § 1.1910(a).

⁵⁰ 47 U.S.C. § 159; 31 U.S.C. § 1301.

the Commission has no record of a proper and timely request for a stay,⁵¹ petition for a declaratory ruling,⁵² or petition for a relevant fee determination.⁵³ Accordingly, under 47 C.F.R. §§ 1.1164(e) and 1.1910, we have withheld action on the *Requests*, and now, we dismiss both.

Alternative grounds for dismissing and denying.

Our dismissal of both *Requests* disposes of the matter; even so, as a matter of administrative economy and to bring to a close these *Requests* and other matters filed concerning its determination to pay a fee it its choosing, we will discuss the alternative separate reasons for both dismissing and denying the *Requests*.

Licensee Combines Requests.

Licensee asks the Commission to determine that call sign stations KUPT(TV) and KTEL-TV are television satellite stations, that two bill invoices are erroneous, and thereafter to change station records and to rescind two demands for payment and collection actions all under the single umbrella of email responses to demands that Licensee pay two delinquent debts. The requested relief in each *Request* categorically involves different action from different bureaus and offices within the Commission. As such, Licensee's submissions violate 47 C.F.R. §1.44 that requires separate pleadings for different requests, and that permits us to return the submission without consideration.⁵⁴ We note, Licensee did not request a waiver of any Commission rule, and the pleadings do not establish good cause for any waiver.⁵⁵ Accordingly, we dismiss the *Requests*.

Request II is moot.

Next, as noted, because Licensee paid the fee on bill number R14T083707 1, which pertains to call sign KTEL-TV, the requested relief (to change the television fee status and to rescind the Demand Letter) is moot, and we therefore dismiss *Request II* as moot.

Licensee's stations are not television satellite stations,
and the bills are not erroneous.

Next, Licensee asks the Commission to rescind *FY 2014 Demand Letter I* as being erroneous because call sign station KUPT(TV) is a television satellite station. From this, two salient issues arise. First, whether during the FY 2014 regulatory fee cycle, was KUPT(TV)

⁵¹ See 47 C.F.R. §§ 1.101, 1.41, 1.43, 1.44, 1.41, 1.102, 1.106, 1.1167(b) ("The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment.").

⁵² 47 C.F.R. § 1.2.

⁵³ 47 C.F.R. §§ 1.1160, 1.1167 ("A challenge to a determination that a party is delinquent in paying a standard regulatory fee must be accompanied by suitable proof that the fee had been paid or waived (deferred from payment during the period in question), or by the required regulatory payment and any assessed penalty payment (see §1.1164(c) of this subpart).")

⁵⁴ 47 C.F.R. § 1.44(d).

⁵⁵ 47 C.F.R. § 1.3.

classed as a television satellite station, and second whether the Demand Letter is erroneous. Following those issues, if answered in the negative, is whether Licensee has presented valid grounds to dispute the debts or delay collection. We discuss each point below, and because we find that during FY 2014, neither KUPT(TV) nor KTEL-TV was a television satellite station and the Demand Letters were not erroneous, there are separate grounds for denying both *Requests* (even if *Request II* was not dismissed for mootness).

Neither call sign station KUPT(TV) nor KTEL-TV
are television satellite stations.

A television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned.⁵⁶ Only commonly owned television satellite stations, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmit programming of the primary station may pay a lower assessed fee.⁵⁷ We note, the statutory fee schedule at 47 U.S.C. § 159 establishes specific fees for commercial television stations, and the text of the schedule as enacted made no distinction between commercial stations that are fully operational and those that are satellite stations. Further, we note that a satellite station is not a translator station, which is separately listed on the regulatory fee schedule. In that regard, the Commission found that Congress assessed the same fee for both commercial fully operational and commercial satellite stations.⁵⁸ Even so, in later years, the Commission established a reduced fee for commonly owned television satellite stations that are authorized under 47 C.F.R. § 73.3555, Note 5. Licensee's stations do not fall within that exception. Indeed, Licensee fails to establish on any ground that KUPT(TV) (or KTEL-TV) should pay less than the regulatory fee payment required for the class of station and market. Licensee acknowledges that "KUPT(TV) is the only full-powered television station licensed to Hobbs,"⁵⁹ and "KTEL-TV is the only full-powered television station licensed to Carlsbad,"⁶⁰ however, Licensee does not establish that during the FY 2014 fee cycle the stations were authorized under Part 73 of the Commission's Rules to transmit all or part of the programming of a parent station. Moreover, the Television & Cable Factbook, Volume 81, pp. A-843 and A-846 (2013) and Television & Cable Factbook, Volume 82, pp. A-849 and A-846 (2014) do not report either station KUPT or station KTEL-TV as a satellite station. In contrast, Licensee points to an undated "screenshot from the Advanced TV Factbook" and an undated copy of a BIA record, which purportedly supports Licensee's status. Licensee's references do not rebut the requirements that an applicant obtain and receive authorization under Part 73 of our rules to transmit all or a part of the programming of a parent station. Plainly, Licensee has not established that it is a television satellite station or that the fees

⁵⁶ *Satellite Station Review*, 6 FCC Rcd 4212, ¶ 3.

⁵⁷ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, ¶ 82 (1994); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 FCC Rcd 9868, 9936 (1999).

⁵⁸ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, ¶ 82 (1994).

⁵⁹ *Request I* at 2.

⁶⁰ *Request II* at 2, *Email* at 3.

for the class of station and market for KUPT(TV) or KTEL-TV are incorrect. Finally, the Commission's analysis and comment on this matter do not support Licensee's assertions. On this separate ground, we deny Licensee's request that we determine the stations are television satellite stations and that the bills are erroneous.

Next, we note that Licensee neither filed an application for satellite station status (as explained above) nor requested a declaratory ruling⁶¹ of the Media Bureau. Instead, Licensee engaged in "informal discussions with [the Commission's] Media Bureau" all the while acknowledging that the Commission's position is "only television satellite stations entitled to the benefit of the lesser satellite fees are those to which the Commission has issued a formal [waiver under 47 C.F.R. § 73.3555 Note 5]."⁶² Plainly, Licensee has no reason to presume its self-help effort to pay less than the required fees is acceptable. Moreover, Licensee never complied with the Commission's procedures to seek a waiver or reduction of the fees. The rule at 47 C.F.R. § 1.1166 requires a licensee to file a request for a waiver or a reduction of a regulatory fee⁶³ and to show both "good cause" and that the "waiver [or] reduction ... of the fee would promote the public interest." Rather than follow those established procedures and present its petition to waive the fees and obtain a refund on the grounds that payment of the required fees would create financial hardship,⁶⁴ Licensee determined on its own to make only partial payments.⁶⁵ That deliberate act left unpaid significant portions of the regulatory fees and additional charges. On this separate ground, we find Licensee had no basis to presume its stations were television satellite stations.

We considered Licensee's assertion that no waiver is required, if the stations were identified as satellite stations in industry publications, and reject the claimed justification for self-help. The Commission's position is unambiguous-- only commonly owned television satellite stations, authorized under 47 C.F.R. § 73.3555, Note 5, that retransmit programming of the primary stations are assessed the smaller fee. All other television licensee are subject to the regulatory fee payment required for their class of station and market.⁶⁶ Licensee did not meet its burden of showing its stations have all of the elements of the standard, thus on this ground, we deny the *Requests*.

⁶¹ 47 C.F.R. § 1.2.

⁶² *Id.* at 2.

⁶³ See also Implementation of Section 9 of the Communications Act, *Memorandum Opinion and Order*, 10 FCC Rcd 12759 (1995).

⁶⁴ 47 C.F.R. § 1.1166; Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 ("The Commission has previously addressed the issues raised ... and set standards for determining, on a case-by-case basis, whether fees for a small station may be reduced below the fees assessed for an assigned DMA and whether fees may be reduced because their payment will create financial hardship.").

⁶⁵ 47 C.F.R. § 1.1940(f).

⁶⁶ Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1998, *Report and Order*, 12 Communications Reg. (P&F) 392, Attachment H., Detailed Guidance on Who Must Pay Regulatory Fees (1998); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 FCC Rcd 9868, 9936 (1999).

The invoiced bill is not erroneous.

The FY 2014 regulatory fee for call sign station KUPT(TV) (the amount remaining after Licensee paid the fees due for call sign station KTEL-TV) is established under 47 U.S.C. § 159(a) and 47 C.F.R. §§ 1.1151 and 1.1153. Licensee asserts the “Demand Letter is in error,”⁶⁷ thus framing its *Request* in the nature of an error claim; however, Licensee fails to comply with the Commission’s rule at 47 C.F.R. § 1.1167⁶⁸ that requires an applicant to provide suitable proof that the fee had been paid or waived. In the alternative, we look to whether Licensee has made its case that the fee is erroneous. As noted above, during the fee cycle at issue (and now), Licensee’s stations were not and are not commonly owned television satellite stations, authorized under 47 C.F.R. § 73.3555, Note 5, and that retransmit programming of the primary stations. Licensee has not established that it possesses all of these elements. Indeed, Licensee’s *Email* confirms essential elements of the bills’ accuracy, *i.e.*, the debts are based on the annual regulatory fees due for full power television stations and that Licensee never properly requested either a fee reduction or a Commission determination that the stations were satellites stations owing a smaller fee. Licensee does not show a valid basis to dispute the debts. Hence, the debt is valid, and unless it is waived, it must be paid. Because Licensee has not established the existence of an error in the billing, we deny the *Requests*.

Licensee does not establish grounds for a waiver of the fees.

Because Licensee does not submit a proper petition, it waived consideration of a waiver of the fees under 47 C.F.R. § 1.1166. Even so, if we construe the content of the *Requests* as seeking a waiver under section 1.1166, we would deny because Licensee did not establish both elements of the standard: *good cause*⁶⁹ and a finding that the *public interest will be served thereby*.⁷⁰ Indeed, Licensee fails to provide relevant evidence, *e.g.*, the stations’ functional service, the service area, household coverage, or A.C. Nielsen ratings.⁷¹ Licensee does not meet the standards,⁷² and on that ground we deny the *Requests*.

⁶⁷ *Request I* at 1.

⁶⁸ 47 C.F.R. § 1.1167(a) Challenges to determinations or an insufficient regulatory fee payment or delinquent fees should be made in writing. A challenge to a determination that a party is delinquent in paying a standard regulatory fee must be accompanied by suitable proof that the fee had been paid or waived (deferred from payment during the period in question), or by the required regulatory payment and any assessed penalty payment (see § 1.1164(c) of this subpart).

⁶⁹ 47 C.F.R. § 1.3.

⁷⁰ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* 1994 *Report and Order*, 9 FCC Rcd at 5354, ¶ 65; *WAIT Radio v. FCC*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

⁷¹ Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *Report and Order*, 11 FCC Rcd 18774, 18786, ¶ 32 (1996) (“We ...rely on Nielsen’s DMA market rankings ... Nielsen data is generally accepted throughout the industry and will be updated and published annually ... We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee.”); Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 (2000) (Commission rejected commenter’s “argu[ment] that small television stations located near large designated market areas (DMA) are assessed disproportionately high fees because the A.C. Nielsen ratings include them in the DMA but they do not serve households in the DMA. Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves.”).

⁷² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

Licensee's Requests do not present a valid appeal.

Finally, Licensee has not established that the *Requests* are a valid administrative appeal. Merely claiming that 47 C.F.R. § 1.1910(b)(3)(i) provides an exception to the sanctions provided for at subsections 1.1910(b)(2) and (b)(3) does not establish the filing and pendency of a proper "challenge through an administrative appeal ... to the existence or amount of the non-tax delinquent debt." Indeed, Licensee acknowledges that it paid less than the required fee without authority. We deny Licensee's *Requests* because they do not present a valid administrative appeal.

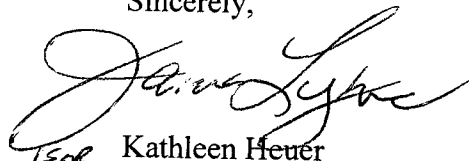
Licensee failed to establish disparate treatment.

Licensee's assertions of disparate treatment are unsupported. Instead of providing evidence to establish its assertions, Licensee suggests that the Commission should accomplish that task. Licensee bears the burden of making its own case before the Commission, and the Commission will not speculate to fill in the gaps.⁷³ On this separate ground, we deny the *Requests*.

Accordingly, we dismiss and, in the alternative, deny Licensee's *Requests* that the Commission change its regulatory fee records to reflect that the licenses are for satellite television stations and rescind the Demand Letters. Licensee remains delinquent in paying debts to the Commission and as such, without further notice, unless all debts are paid in full, we will withhold action on and dismiss any pending or later filed application, including any petition for reconsideration.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202 418-1995).

Sincerely,


For Kathleen Heuer
Chief Financial Officer

⁷³*Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner ... has the 'burden of clarifying its position' before the agency."); see also 47 C.F.R. § 1.65 (An applicant is responsible for the continuing accuracy and completeness of information furnished.); Applications of William M. Piner, *et al.*, *Hearing Designation Order*, 2 FCC Rcd 7095, ¶ 3 (MM 1985) ("Having failed to [amend its applications], the Commission will not speculate with respect to this applicant's ... intentions. The Commission will only examine the applications before it and will not temporize with flawed proposals.").

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 26 2017

OFFICE OF
MANAGING DIRECTOR

Dennis P. Corbett, Esquire
Telecommunications Law Professionals PLLC
1025 Connecticut Avenue, N.W., Suite 1011
Washington, DC 20036

Licensee/Applicant: Ramar Communications, Inc.
Waiver/Refund Request: Regulatory Fees and Late
Payment Penalty
Disposition: Dismissed and Denied (47 U.S.C. §
159; 31 U.S.C. § 1301; 47 C.F.R. §§ 1.2, 1.3, 1.44,
1.1157(c)(1), 1.1164, 1.1166, 1.1910)
Fee: Fiscal Year (FY) 2015 Regulatory Fee and
Regulatory Fee Late Payment Penalties
Station(s): KUPT(TV) and KTEL-TV
Dates of Payment (Partial): Jun. 22, 2016
Date Request Submitted: Oct. 22, 2015
Fee Control No.: RROG 15-00016093

Dear Counsel:

This responds to Ramar Communications, Inc. (Licensee's) *2015 Request*,¹ submitted in response to "FCC Bills for Collection identified in the Commission's Red Light Display System on ... October 22, 2015 (Bill Numbers R15T083707 and R15T027431)," and that requested the "Red Light applied to [Licensee, which procedurally is a withhold of action under 47 C.F.R. § 1.1910,] in the FCC's Red Light Display System be removed in connection with the two referenced Bill Numbers as Ramar continues to work to resolve [the] contested matter with the FCC."² Licensee referred to its earlier *2014 Requests*,³ which asked the "Commission [to change its] regulatory fee records ... to reflect the television satellite status of [station call signs KUPT TV and KTEL-TV] and that the Demand Letter[s] be rescinded."⁴ As we discuss below, we dismiss and deny the *2015 Request* on alternative grounds. First, we dismiss the *2015 Request* because it is moot. In the alternative, we construe the *2015 Request* as attempting to present the same form of request made in *2014 Requests*, which were applications; accordingly, our disposition is the same—we dismiss *2015 Request* because Licensee is delinquent in paying a

¹ Email from Jeffrey C. Mooradian (JMooradian@lrmansenter.com) to ARINQUIRIES (Oct. 22, 2015) (*2015 Request*).

² *Id.*

³ Email from Dennis P. Corbett (DCorbett@lrmansenter.com) to ARINQUIRIES (Nov 24, 2014) (*2014 Request I*) with Attachment A, Advanced TV Factbook Listing for KUPT (TV), Attachment B, BIA Listing for KUPT (TV); email from Dennis P. Corbett (DCorbett@lrmansenter.com) to ARINQUIRIES (Nov. 24, 2014) (*2014 Request II*) with Attachment A, Advanced TV Factbook Listing for KETL-TV, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report.

⁴ *2014 Request I* at 2, *2014 Request II* at 2.

debt to the Commission. Moreover, Licensee improperly combines separate requests for relief in a single pleading. Next, in the alternative, we deny the *2015 Request* because Licensee failed to establish that its two stations are television satellite stations, that the Commission should change its records, or that the Commission should waive collection of the fees.⁵ As a procedural matter, it is apparent from other email correspondence to Commission staff that Licensee's counsel has changed his mailing address; however, counsel did not provide an address change related to this proceeding⁶ or in the Commission Registration System (CORES).⁷

Because Licensee attempts to incorporate the *2014 Requests* as the basis for its *2015 Request*, we note that in connection with its *2014 Requests*, Licensee submitted a letter⁸ (*Letter*) to Treasury and Pioneer Credit Recovery, Inc., requesting "dismissal of th[e collection action] at Treasury while the underlying issues are reviewed by the FCC."⁹ In part, *Licensee* asserted it had a "challenge to the asserted regulatory fees and penalties" before the Commission, thus the Commission was "premature [in its] referral of th[e debt] to Treasury."¹⁰ Our detailed response to Treasury recommended continued collection action.

Background

The Commission's records show that Licensee is delinquent in paying regulatory fees for (FY) 2013 and FY 2014, which debts are delinquent and have been referred to the U.S. Department of the Treasury for collection action. Additionally, the Commission's records show that on June 22, 2016, licensee paid the balance owed on invoice R15T083707 and R15T027431, which are the debts discussed in *2015 Request*.

Licensee attempts to incorporate by attachment the content of the *2014 Requests* as providing a reason for excepting it from the action under 47 C.F.R. § 1.1910, i.e., withhold action on any pending or filed application. In that regard and as a convenience, we will refer to Licensee's *2014 Request I* to set out the background. In *2014 Request I*, Licensee asserts, the "FCC Demand Letter ... which seeks a payment of \$31,831.25 in addition to regulatory fees and penalties ... relating to the regulatory fee payment cycle ending September 23, 2014[during

⁵ 47 C.F.R. § 1.1166.

⁶ See 47 C.F.R. § 1.65.

⁷ 47 C.F.R. § 1.8002. Licensee's contact address reported in CORES is: 2001 L Street, NW, Suite 400, Washington, DC 20036.

⁸ Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20006-1809 to Department of the Treasury, Debt Management Services, Post Office Box 830794, Birmingham, AL 35283-0794 (Mar. 17, 2016) (*Letter*) with attachments (A) letter from Department of the Treasury, Bureau of the Fiscal Service, P.O. Box 830794, Birmingham, AL 35283-0794 to Ramar Communications Inc., 2000 K Street, NW, Suite 600, Washington, DC 20006 (Feb. 22, 2016) (*Feb. 22, 2016, Treasury Demand*) and (B) email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of *Feb. 22, 2016, Treasury Demand*; Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2001 L Street NW, Suite 400, Washington, DC 20036 to Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 (Jun. 29, 2016) (*Letter II*) with Attachment A, Letter from Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 to Ramar Communications, Atty Dennis P Corbett, 2000 K St., NW, Ste 600, Washington, DC 20006 (Jun. 2, 2016), email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of *Feb. 22, 2016, Treasury Demand*.

⁹ *Letter*.

¹⁰ *Id.*

which period Licensee] remitted to the FCC a regulatory fee payment ... of \$1,550 ... is in error [based on the following: that f]ormal FCC satellite exemptions are neither needed ... nor issued ... in Designated Market Areas ... where, as here, the predicted signal coverage contour ... has no cognizable overlap [and i]n such cases, a satellite listing ... by Warren Communications News provides direct evidence of a station's satellite status[, and] the [attached] screen shot from the Advanced TV Factbook recit[es] the Station's status ... as a satellite of KMYL-LD[, and] satellite status is confirmed by [the attached] BIA record[, and] the satellite is licensed to Hobbs, a much smaller community [where] KUPT (TV) is the only full-powered television station licensed to Hobbs[; moreover,] Television satellites are particularly common in the Albuquerque DMA ... To [Licensee's] knowledge, these other DMA satellite stations ... pay FCC regulatory fees as satellites ... all similarly situated stations owners are to be treated similarly ... for all of these reasons [Licensee] requests that Commission regulatory fee records be changed to reflect the television satellite status ... and ... the Demand Letter be rescinded."¹¹

Also, on November 24, 2014, Licensee submitted *2014 Request II*, which presented identical information concerning the debt related to call sign KTEL-TV.

On January 30, 2013, the Commission demanded that Licensee pay \$22,179.17 as is set forth in Bill No. R13T027431 (*FY 2013 Demand I*)¹² (a debt currently at Treasury for collection), and the Commission provided Licensee with notice that it had 15 days in which to request an opportunity to inspect or copy debt-related records, to request an installment payment plan, or, as permitted by FCC rules, seek agency review of the basis of the debt. Specifically, the notice explained, to exercise "any of these rights, [the debtor] must, within the allowed time, deliver to the FCC's address ... a written request (letter or email) specifying the nature of the request and providing relevant verified supporting documentation. After 15-days, [the debtor] will be deemed to have waived any right not exercised, and any notice that [debtor] may receive later does not extend or renew that period."¹³ On the same date, the Commission provided a demand for payment with the same notifications for the payment of Bill No. R13T083707 1,¹⁴ (which Licensee paid on September 19, 2013). On October 28, 2014, the Commission demanded payment of Bill No. BRF R14T027431 1¹⁵ (at Treasury for collection) and Bill No. BRF R14T083707 1.¹⁶ These two Demand Letters provided Licensee with 30 days to exercise a right by written request specifying the nature of the request and providing relevant verified supporting documentation.

¹¹ *Request I* at 1-2.

¹² Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Jan. 30, 2014)(*FY 2013 Demand Letter I*).

¹³ *Id.*

¹⁴ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Jan. 30, 2014)(*FY 2013 Demand Letter II*).

¹⁵ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Oct. 28, 2014)(*FY 2014 Demand Letter I*).

¹⁶ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Oct. 28, 2014)(*FY 2014 Demand Letter II*).

On March 7, 2016, Licensee submitted to the Commission's staff an *Email* asserting he recently "learned that the Commission's online LMS system [would] not accept [Licensee's] application[, and that] the block [was] related to [Licensee's delinquent] regulatory fee bills."¹⁷ Continuing, Licensee asserted it "has consistently been paying regulatory fees for KTEL-TV and KUPT based on their recognized status within the television industry as satellite stations and that [Licensee] has a long standing as yet unresolved challenge to the FCC's position that [the] two stations should pay regulatory fees as if they were full power *non-satellite* stations."¹⁸ Licensee asserted, the so-called challenge has been of "substantial duration," and as such, under 47 C.F.R. § 1.1910(b)(3)(i), the Commission's procedure to withhold action on any application filed by a delinquent debtor should be deferred.¹⁹ Licensee asserted that from its "informal discussions with [the Commission's] Media Bureau," Licensee "believe[s] that [the Commission] staff is taking the position that the only television satellite stations entitled to the benefit of the lesser satellite fees are those to which the Commission has issued a formal [waiver under 47 C.F.R. §] 73.3555 Note 5."²⁰ Licensee, however, asserts it does not "need [a] Note 5 duopoly waiver" and it is Licensee's "understanding that the Commission has historically consulted industry publications to determine whether a particular station qualifies as a satellite [and Licensee's two stations] are listed as satellite stations in BIA's database."²¹

Licensee asserts, the statement, "stations designated as Television Satellite Stations in the 2002 Edition of the *Television and Cable Factbook* ... are subject to the fee applicable to Television Satellite Stations," in Assessment and Collection of Regulatory Fees for Fiscal Year 2002, *Report and Order*, 17 FCC Rcd 13203, 13268 (2002) is "dispositive here."²² Next, Licensee asserts that its "request[] that FCC staff review broadly the Commission's regulatory fee database to determine the extent to which the universe of satellite stations that pay satellite fees ... also encompasses non-Note 5 stations that are listed as satellites in industry publications."²³ Licensee did not provide evidence supporting its speculation of disparate fee payment, rather Licensee asserted in the *2014 Requests* and *Email* it is "reliant on the staff's obtaining this information," and from that, Licensee posits it is entitled to pay only a portion of the required annual regulatory fees for its stations.²⁴

Licensee also "suggests that lesser satellite fees for [the two stations] are appropriate and equitable, and [lower fees] will facilitate [the stations] continued provision of service to the public." Licensee asserts "KTEL-TV is ... the only full-power station licensed to Carlsbad, New Mexico" and "KUPT is currently the only full-power station licensed to Hobbs, New Mexico."²⁵ Licensee "is aware of no reason why similarly situated satellite stations should be treated differently based solely on the happenstance of signal contour overlap and the need for a Note 5 duopoly waiver."²⁶ Finally, Licensee asserts, "the integrity of satellite listings in industry

¹⁷ *Email* at 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 2-3.

²⁴ *Id.* at 3.

²⁵ *Id.*

²⁶ *Id.*

publications like BIA is self-policing [and p]resumably, that real world reality is what led the Commission in the 2002 R&O to utilize the industry publication test²⁷

Rebutting Licensee's assertions, the relevant Television & Cable Factbook, Volume 81, pp. A-843 and A-846 (2013) and Television & Cable Factbook, Volume 82, pp. A-849 and A-846 (2014) do not report either station KUPT or KTEL-TV as a satellite station.

The basis of each delinquent debt is the unpaid portions of an annual regulatory fee remaining after Licensee unilaterally decided to pay a smaller fee amount. Under 47 U.S.C. § 159 and the Commission's rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities.²⁸ When the required payment is received late or it is incomplete, under the law, the Commission automatically assesses a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."²⁹ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."³⁰

Standards

The Commission's orders and rules include the well-established procedures for assessing and collecting annual regulatory fees, and procedures for filing applications at the Commission including, for example, petitions for declaratory relief, petitions to defer, waive, reduce, or refund a payment, and other matters seeking Commission action, and the consequences when a licensee fails to comply.³¹ Relevant to television station regulatory fees, television licensee are subject to the regulatory fee payment required for their class of station and market unless the station is a commonly owned television satellite station, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmits programming of the primary station.³² A television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned.³³ Licensees are expected to know these rules and procedures,³⁴ and the consequences for non-compliance, including nonpayment of a debt. In that regard, a debt is "any amount of funds or property that has been determined by an appropriate official of the Federal Government to be

²⁷ *Id.*

²⁸ 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

²⁹ 47 U.S.C. §159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

³⁰ 47 C.F.R. § 1.1164.

³¹ See 47 C.F.R. Part 1, e.g., Subparts A, G, and O, 47 C.F.R. §§ 1.2, 1.43, 1.44, 1.1153, 1.1164, 1.1166.

³² Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 F.C.C. Rcd. 5333, ¶ 82 (1994); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 F.C.C. Rcd. 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 F.C.C. Rcd. 9868, 9936 (1999).

³³ Television Satellite Stations Review of Policy Rules, *Report and Order*, 6 FCC Rcd 4212, ¶ 3 (1991) (*Satellite Station Review*).

³⁴ 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc., Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

owed to the United States by a person, organization, or entity other than another Federal agency.”³⁵

Relevant to the due date for paying the fee, each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. September 20, 2013, September 23, 2014, and September 24, 2015, respectively, were the deadlines for paying the FY 2013, FY 2014, and FY 2015 annual regulatory fees.³⁶ For example, concerning the deadline, the Commission’s *2014 Regulatory Fee Order*, 30 FCC Rcd at 10286, ¶ 50, warned,

To be considered timely, regulatory fee payments must be made received and stamped at the lockbox bank by the payment due date for regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline for filing these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission’s rules, which generally requires the Commission to withhold action on “applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission” and in the ... (DCIA). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the debt pursuant to the DCIA and section 1.1940(d) of the Commission’s rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In the case of partial payments (underpayments) of regulatory fees, the payor will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner. [Footnotes deleted.]

After the deadline, the full amount of the regulatory fee includes the 25% late payment penalty³⁷ and, if the debt remains unpaid, the balance owed includes the accrued charges of collection, interest, and penalties.

³⁵ 31 U.S.C. § 3701(b)(1); *accord* 31 C.F.R. § 900.2; 47 C.F.R. 1.1901(e).

³⁶ See FY 2013 Regulatory Fees Due No Later Than September 20, 2013, 11:59 pm Eastern Time (ET), *Public Notice*, DA 13-1796. (Sep. 4, 2013); FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 PM Eastern Time (ET), *Public Notice*, DA 14-1261 (Aug. 29, 2014); Fee Filer is Open for Payment of FY 2015 Regulatory Fees, FY 2015 Regulatory Fees Are Due September 24, 2015, *Public Notice* (Sep. 2, 2015).

³⁷ 47 C.F.R. § 1.1164 (“[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner.”).

If a regulatee tenders less than the full amount owed, it is a partial payment, which is applied to the amount owed as set forth in 47 C.F.R. § 1.1940(f)--first to the penalties and accrued charges, and then to the principal amount owed.³⁸ Afterwards, any unpaid portion is a delinquent regulatory fee that incurs interest, penalties, and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. Moreover, until the full amount is paid or satisfactory arrangements are made, the licensee remains a delinquent debtor subject to the Commission's administrative sanctions of dismissal as set forth at 47 C.F.R. §§ 1.1164(e)³⁹ and 1.1910.

Under the Commission's rules, an *application* includes, in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.⁴⁰ A debt is delinquent when it "has not been paid by the date specified."⁴¹ Upon filing, the Commission will examine an "application (including a petition for reconsideration or any application for review of a fee determination) ... to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits[, and a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination ... until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made and ... the application may be dismissed."⁴² Furthermore, "[i]f a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed."⁴³

In addition to the examination to determine whether the applicant is delinquent in paying a debt owed to the Commission, the submission will be review to determine compliance with the Commission's rules of practice and procedure. For example, and relevant here, an applicant may not combine requests requiring action by any person or persons pursuant to delegated authority with requests for action by any other person or persons acting pursuant to delegated authority.⁴⁴

An applicant seeking a waiver, reduction, or deferral of a fee must comply with 47 C.F.R. § 1.1166, which provides,

The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to

³⁸ 47 C.F.R. §§ 1.1940(f) ("When a debt is paid in partial ... payments, amounts received ... shall be applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal."), 1.1157(c)(1), 1.1164(c).

³⁹ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), 1.1910.

⁴⁰ 47 C.F.R. § 1.1901(d).

⁴¹ 47 C.F.R. § 1.1901(i).

⁴² 47 C.F.R. § 1.1910(a) & (b).

⁴³ 47 C.F.R. § 1.1910(b)(3).

⁴⁴ 47 C.F.R. § 1.44.

the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. (1) If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§1.1152 through 1.1156 of this subpart. (2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.

An applicant seeking a waiver of the penalty and assessed charges has the burden of demonstrating compelling and "most extraordinary circumstances"⁴⁵ that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.⁴⁶

Under 47 C.F.R. § 1.2, a regulatee may request a declaratory ruling to remove an uncertainty.

Discussion

Licensee is delinquent in paying debts; therefore, the applications are dismissed.

Licensee asks the Commission to excuse it from the consequence of 47 C.F.R. § 1.1910, withholding action on applications filed by a regulatee that is delinquent in paying debts owed the Commission, because in 2014 it had submitted to the Commission still another application for relief while it was delinquent in paying FY 2013 regulatory fees. To achieve the ends of the multiple requests, the Commission must first stay the requirement that Licensee pay valid regulatory fees⁴⁷ for the several years⁴⁸ and thereafter waive as to Licensee the application of 47 C.F.R. §§ 1.1164(e) and 1.1910⁴⁹ under the standard set forth at 47 C.F.R. § 1.3. Next, the Commission must determine that Licensee's two stations are commonly owned television satellite stations, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, to retransmit programming of the primary station.⁵⁰ Thus, it would be necessary for the Commission first to

⁴⁵ *McLeodUSA Telecommunications Services, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 6587, 6589, ¶ 8 (2004) (denying the request for waiver of 25 percent penalty).

⁴⁶ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5354 ¶ 65 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995) (1994 *Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26466, ¶ 5 (2003) (*Phoenix Broadcasting, Inc.*).

⁴⁷ 47 C.F.R. § 1.44.

⁴⁸ Because the FY 2013 and FY 2014 fees are unpaid, the Commission would be expected to sua sponte stay the requirement to pay those fees before looking to stay payment of the delinquent FY 2015 fees.

⁴⁹ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), 1.1910.

⁵⁰ See *Satellite Station Review; Report and Order*, 10 FCC Rcd 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the

make a determination declaring several exceptions to its rules, then grant the substance of the *2014 Requests*, and thereafter act to change regulatory fee records to reflect that the annual regulatory fees for the two stations are less than the fees for the respective class of station and market. Aside from the requirements set forth at 47 C.F.R. § 1.3 to show good cause, which Licensee failed to establish, these multiple procedures implicate different procedural rules and multiple bureaus and offices of the Commission. Moreover, despite the informal manner in which Licensee submitted the *2015 Request*, by email after discovering that it was Red Lighted, the *2015 Request* is an application for relief within the meaning of our rule at 47 C.F.R. § 1.1901(d), *i.e.*, a request for assistance, relief, declaratory ruling or a decision by the Commission or on delegated authority. We note, Licensee does not directly seek relief from paying the delinquent FY 2015 regulatory fees as provided for at 47 C.F.R. § 1.1167.⁵¹

Our first task is to examine the application to determine whether Licensee has paid the appropriate regulatory fees or is delinquent in its debts owed to the Commission.⁵² As mentioned, above, Licensee is delinquent in paying regulatory fees, which are debts owed the United States as prescribed by statute⁵³ and codified at 47 C.F.R. § 1.1153. Looking further, the Commission has no record of a proper and timely request for a stay,⁵⁴ declaratory ruling,⁵⁵ or relevant fee determination.⁵⁶ Accordingly, under 47 C.F.R. §§ 1.1164(e) and 1.1910, we have withheld action on the *2015 Request* and now dismiss.

Alternative grounds for dismissing and denying.

Our dismissal disposes of the matter; even so, as a matter of administrative economy and to bring to a close this and other matters filed by Licensee resting on its determination to pay a fee it its choosing, we will discuss the alternative separate reasons for both dismissing and denying the *2015 Request*.

primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 FCC Rcd 9868, 9936 (1999).

⁵¹ 47 C.F.R. § 1.1167(a) Challenges to determinations or an insufficient regulatory fee payment or delinquent fees should be made in writing. A challenge to a determination that a party is delinquent in paying a standard regulatory fee must be accompanied by suitable proof that the fee had been paid or waived (deferred from payment during the period in question), or by the required regulatory payment and any assessed penalty payment (see §1.1164(c) of this subpart).

⁵² 47 C.F.R. § 1.1910(a).

⁵³ 47 U.S.C. § 159; 31 U.S.C. § 1301.

⁵⁴ See 47 C.F.R. §§ 1.101, 1.41, 1.43, 1.44, 1.41, 1.102, 1.106, 1.1167(b) ("The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment.").

⁵⁵ 47 C.F.R. § 1.2.

⁵⁶ 47 C.F.R. §§ 1.1160, 1.1167 ("A challenge to a determination that a party is delinquent in paying a standard regulatory fee must be accompanied by suitable proof that the fee had been paid or waived (deferred from payment during the period in question), or by the required regulatory payment and any assessed penalty payment (see §1.1164(c) of this subpart).").

Licensee Combines Requests.

By referring to the content of its *2014 Requests*, Licensee asks the Commission to determine here that call sign stations KUPT(TV) and KTEL-TV are television satellite stations, that two invoices are erroneous, and thereafter to change station records and rescind demands for payment and collection actions, all under a single email umbrella response to a Red Light Display System notice and with reference to earlier demands that Licensee pay two delinquent FY 2014 debts. Categorically, the requested relief involves different actions from different bureaus and offices within the Commission. As such, Licensee's submissions violate 47 C.F.R. §1.44 that requires separate pleadings for different requests and permits us to return the submission without consideration.⁵⁷ Furthermore, Licensee did not request a waiver of any Commission rule, and the pleadings do not establish good cause for any waiver.⁵⁸ Accordingly, we dismiss the *Requests*.

2015 Request is moot.

Next, as noted, because on June 23, 12016, Licensee paid the delinquent FY 2015 fees, the relief requested (to remove Licensee's information from the Red Light Display due to the FY 2015 delinquency) is moot, and we therefore dismiss *Request* as moot.

Licensee's stations are not television satellite stations,
and the bills are not erroneous.

We note, because Licensee hangs the *2015 Request* on the *2014 Requests*, our disposition on the *2014 Requests* is applicable here.

A television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned.⁵⁹ Only commonly owned television satellite stations, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmit programming of the primary station may pay a lower assessed fee.⁶⁰ We note, the statutory fee schedule at 47 U.S.C. § 159 establishes specific fees for commercial television stations, and the text of the schedule as enacted made no distinction between commercial stations that are fully operational and those that are satellite stations. Further, we note that a satellite station is not a translator station, which is separately listed on the regulatory fee schedule. In that regard, the Commission found that Congress assessed the same fee for both commercial fully operational and commercial satellite

⁵⁷ 47 C.F.R. § 1.44(d).

⁵⁸ 47 C.F.R. § 1.3.

⁵⁹ *Satellite Station Review*, 6 FCC Rcd 4212, ¶ 3.

⁶⁰ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, ¶ 82 (1994); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 FCC Rcd 9868, 9936 (1999).

stations.⁶¹ Even so, in later years, the Commission established a reduced fee for commonly owned television satellite stations that are authorized under 47 C.F.R. § 73.3555, Note 5. Licensee's stations do not fall within that exception. Indeed, Licensee fails to establish on any ground that KUPT(TV) (or KTEL-TV) should pay less than the regulatory fee payment required for the class of station and market. Licensee acknowledges that "KUPT(TV) is the only full-powered television station licensed to Hobbs,"⁶² and "KTEL-TV is the only full-powered television station licensed to Carlsbad,"⁶³ however, Licensee does not establish during the FY 2014 or FY 2015 fee cycles that the stations were authorized under Part 73 of the Commission's Rules to transmit all or part of the programming of a parent station. Moreover, the Television & Cable Factbook, Volume 81, pp. A-843 and A-846 (2013) and Television & Cable Factbook, Volume 82, pp. A-849 and A-846 (2014) do not report either station KUPT or station KTEL-TV as a satellite station. In contrast, Licensee points to an undated "screenshot from the Advanced TV Factbook" and an undated copy of a BIA record, which purportedly supports Licensee's status. Licensee's references do not rebut the requirements that an applicant obtain and receive authorization under Part 73 of our rules to transmit all or a part of the programming of a parent station. Plainly, Licensee has not established that it is a television satellite station or that the fees for the class of station and market for KUPT(TV) or KTEL-TV are incorrect. Finally, the Commission's analysis and comment on this matter do not support Licensee's assertions. We deny Licensee's request that we determine the stations are television satellite stations and that the bills are erroneous.

Next, we note that Licensee neither filed an application for satellite station status (as explained above) nor requested a declaratory ruling⁶⁴ of the Media Bureau. Instead, Licensee engaged in "informal discussions with [the Commission's] Media Bureau" all the while acknowledging that the Commission's position is "only television satellite stations entitled to the benefit of the lesser satellite fees are those to which the Commission has issued a formal [waiver under 47 C.F.R. §] 73.3555 Note 5."⁶⁵ Plainly, Licensee has no reason to presume its self-help effort to pay less than the required fees is acceptable. Moreover, Licensee never complied with the Commission's procedures to seek a waiver or reduction of the fees. The rule at 47 C.F.R. § 1.1166 requires a licensee to file a request for a waiver or a reduction of a regulatory fee⁶⁶ and to show both "good cause" and that the "waiver [or] reduction ... of the fee would promote the public interest." Rather than follow those established procedures and present its petition to waive the fees and obtain a refund on the grounds that payment of the required fees would create financial hardship,⁶⁷ Licensee determined on its own to make only partial payments.⁶⁸ That deliberate act left unpaid significant portions of the regulatory fees and additional charges. On

⁶¹ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, ¶ 82 (1994).

⁶² *Request I* at 2.

⁶³ *Request II* at 2, *Email* at 3.

⁶⁴ 47 C.F.R. § 1.2.

⁶⁵ *Id.* at 2.

⁶⁶ See also Implementation of Section 9 of the Communications Act, *Memorandum Opinion and Order*, 10 FCC Rcd 12759 (1995).

⁶⁷ 47 C.F.R. § 1.1166; Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 ("The Commission has previously addressed the issues raised ... and set standards for determining, on a case-by-case basis, whether fees for a small station may be reduced below the fees assessed for an assigned DMA and whether fees may be reduced because their payment will create financial hardship.").

⁶⁸ 47 C.F.R. § 1.1940(f).

this separate ground, we find Licensee had no basis to presume its stations were television satellite stations.

We considered Licensee's assertion that no waiver is required, if the stations were identified as satellite stations in industry publications, and reject the claimed justification for self-help. The Commission's position is unambiguous-- only commonly owned television satellite stations, authorized under 47 C.F.R. § 73.3555, Note 5, that retransmit programming of the primary stations are assessed the smaller fee. All other television licensee are subject to the regulatory fee payment required for their class of station and market.⁶⁹ Licensee did not meet its burden of showing its stations have all of the elements of the standard, thus on this ground, we deny the *2015 Request*.

The invoiced bill is not erroneous.

Licensee does not dispute the accuracy of the FY 2015 regulatory fee invoices. Rather it points only to the *2104 Requests* as some reason to remove Licensee from the so-called Red Light Display. That broad assertion without any supporting evidence does not establish the existence of an error in the billing. The FY 2015 regulatory fees for Licensee's stations are established under 47 U.S.C. § 159(a) and 47 C.F.R. §§ 1.1151 and 1.1153. Licensee does not assert or establish an error in the demands for payment. Indeed, the *2015 Request* fails to comply with the Commission's rule at 47 C.F.R. § 1.1167⁷⁰ that requires an applicant to provide suitable proof that the fee is paid or waived. In the alternative, we look to whether Licensee has made its case that the fee is erroneous. As noted above, during the fee cycle at issue (and now), Licensee's stations were not and are not commonly owned television satellite stations, authorized under 47 C.F.R. § 73.3555, Note 5, that retransmit programming of the primary stations. Licensee has not established that it possesses all of these elements. Indeed, Licensee's *Email* confirms essential elements of the bills' accuracy, *i.e.*, the debts are based on the annual regulatory fees due for full power television stations and that Licensee never properly requested either a fee reduction or a Commission determination that the stations were satellites stations owing a smaller fee. Licensee does not show a valid basis to dispute the debts. Hence, the debts are valid, and unless waived, they must be paid. Because Licensee has not established the existence of an error in the billing, we deny the *2015 Requests*.

⁶⁹ Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1998, *Report and Order*, 12 Communications Reg. (P&F) 392, Attachment H., Detailed Guidance on Who Must Pay Regulatory Fees (1998); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 FCC Rcd 9868, 9936 (1999).

⁷⁰ 47 C.F.R. § 1.1167(a) Challenges to determinations or an insufficient regulatory fee payment or delinquent fees should be made in writing. A challenge to a determination that a party is delinquent in paying a standard regulatory fee must be accompanied by suitable proof that the fee had been paid or waived (deferred from payment during the period in question), or by the required regulatory payment and any assessed penalty payment (see § 1.1164(c) of this subpart).

Licensee does not establish grounds for a waiver of the fees.

Because Licensee does not submit a proper petition, it waived consideration of a waiver of the fees under 47 C.F.R. § 1.1166. Even so, if we construe the content of the *2015 Request* as seeking a waiver under, we would deny because Licensee did not establish both elements of the standard: *good cause*⁷¹ and a finding that the *public interest will be served thereby*.⁷² Indeed, Licensee fails to provide relevant evidence, *e.g.*, the stations' functional service, the service area, household coverage, or A.C. Nielsen ratings.⁷³ Licensee does not meet the standards,⁷⁴ and on that ground we deny the *Requests*.

Licensee's Requests do not present a valid appeal.

Finally, Licensee has not established that the *2015 Request* is a valid administrative appeal. Merely claiming in the *2014 Requests* that 47 C.F.R. § 1.1910(b)(3)(i) provides an exception to the sanctions provided for at subsections 1.1910(b)(2) and (b)(3) does not establish the filing and pendency of a proper "challenge through an administrative appeal ... to the existence or amount of the non-tax delinquent debt." Contrary to Licensee's assertion in the *2015 Request*, there is no "contested matter with the FCC."⁷⁵ Indeed, Licensee acknowledges that it paid less than the required fee without authority. We deny Licensee's *Request* because it does not present a valid administrative appeal.

Licensee failed to establish disparate treatment.

Turning again to the content of *2014 Requests*, Licensee's assertions of disparate treatment are unsupported. Instead of providing evidence in either the *2014 Requests* or the *2015 Request* to establish its assertions, Licensee relies on only the suggestion in the *2014 Requests* that the Commission should accomplish that task. Licensee bears the burden of making its own case before the Commission, and the Commission will not speculate from multiple submissions to fill in the gaps.⁷⁶ On this separate ground, we deny the *2015 Request*.

⁷¹ 47 C.F.R. § 1.3.

⁷² 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* 1994 *Report and Order*, 9 FCC Rcd at 5354, ¶ 65; *WAIT Radio v. FCC*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

⁷³ Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *Report and Order*, 11 FCC Rcd 18774, 18786, ¶ 32 (1996) ("We ... rely on Nielsen's DMA market rankings ... Nielsen data is generally accepted throughout the industry and will be updated and published annually ... We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee."); Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 (2000) (Commission rejected commenter's "argu[ment] that small television stations located near large designated market areas (DMA) are assessed disproportionately high fees because the A.C. Nielsen ratings include them in the DMA but they do not serve households in the DMA. Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves.").

⁷⁴ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

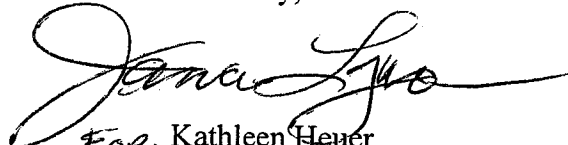
⁷⁵ *2015 Request* at 1.

⁷⁶ *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner ... has the 'burden of clarifying its position' before the agency."); *see also* 47 C.F.R. § 1.65 (An applicant is responsible for the continuing accuracy and completeness of information furnished.); Applications of William M. Piner, *et al.*, *Hearing Designation Order*, 2 FCC Rcd 7095, ¶ 3 (MM 1985) ("Having failed to [amend its applications], the Commission will not speculate

Accordingly, we dismiss and, in the alternative, deny Licensee's *2015 Request* that the Commission remove Licensee from the Red Light Display System. Licensee remains delinquent in paying debts to the Commission and as such, without further notice, unless all debts are paid in full, we will withhold action on and dismiss any pending or later filed application, including any petition for reconsideration.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


FOR: Kathleen Heuer
Chief Financial Officer

with respect to this applicant's ... intentions. The Commission will only examine the applications before it and will not temporize with flawed proposals.").

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

FEB 6 2017

OFFICE OF
MANAGING DIRECTOR

Dennis P. Corbett, Esquire
Telecommunications Law Professionals PLLC
1025 Connecticut Avenue, N.W., Suite 1011
Washington, DC 20036

Licensee/Applicant: Ramar Communications, Inc.
Petition for Reconsideration & Request for Refund:
Regulatory Fees and Late Payment Penalty
Disposition: Dismissed and Denied (47 U.S.C. §§
159, 405; 31 U.S.C. § 1301; 47 C.F.R. §§ 0.401,
1.2, 1.3, 1.44, 1.106(p), 1.1157(c)(1), 1.1160,
1.1161, 1.1164, 1.1166, 1.1167, 1.1910)
Fee: Fiscal Year (FY) 2014 Regulatory Fee and
Regulatory Fee Late Payment Penalties
Station(s): KTEL-TV
Date of Payment: Jun. 22, 2016
Date Request Submitted: Jun. 22, 2016
Fee Control No.: RROG 16-00016184

Dear Counsel:

This responds to Ramar Communications, Inc. (Licensee's) Petition for Reconsideration and Request for Refund of Regulatory Fees (*Petition*),¹ submitted to ARINQUIRIES seeking reconsideration of the *Jun. 2016 Demand Letter*² and a refund of the amount Licensee paid to the Commission in response to that *Demand Letter*. Specifically, Licensee seeks "reconsideration of the June 7, 2016 Demand Letter ... related to [Bill No. BRF R14T083707] for amounts allegedly owed by [Licensee] in connection with ... FY2014 regulatory fees, and [Licensee] request[s] that these fees (including all penalties and interest) ... paid [June 22, 2016] be refunded."³ In addition, Licensee asks the Commission to "(i) determine ... for purposes of regulatory fees, the

¹ Petition for Reconsideration of Regulatory Fee Demand Letter and Request for Refund of Regulatory Fees, KTEL-TV, Carlsbad, NM (Facility ID No. 83707, *Petition for Reconsideration and Request for Refund of Regulatory Fees* to ARINQUIRIES (Jun. 22, 2016) with Exhibit 1, Demand Letter from FCC, Washington, DC 20554 to Ramar Communications, Inc., 2001 L Street, NW, Suite 400, Washington, DC 20036 (Jun. 7, 2016) (*Jun. 2016 Demand Letter*), FCC Remittance Advice Bill for Collection, Copy of Transfer of Funds Receipt (6/22/2016); Exhibit 2, Demand Letter from FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000 K Street, NW, Suite 600, Washington, DC 20006 (Oct. 28, 2014) (*Oct. 2014 Demand Letter*), FCC Remittance Advice Bill For Collection; email from Dennis P. Corbett (DCorbett@lermansenter.com) to ARINQUIRIES (Nov. 24, 2014) (*2014 Request II*) with Attachment A, Advanced TV Factbook Listing for KETL-TV, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report; Exhibit 3, email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of *Feb. 22, 2016, Treasury Demand*.

² *Jun. 2016 Demand Letter*.

³ *Petition* at 1.

Station is a satellite station, entitled to pay the lower ... fee amount; (ii) change Ramar's red light status from 'red' to 'green;' and (iii) refund in full [Licensee's] payment of the FY2014 Bill."⁴

In summary, Licensee asserts that it has an "unresolved ... challenge to [the Commission's] imposition of [annual regulatory] fees"⁵ that is based on Licensee's described "disagreement between [Licensee] and the Commission about whether [Licensee's] television station KTEL-TV ... owes higher non-satellite regulatory fees, or lower satellite [television station] fees."⁶ Licensee asserts, "for several years, [it] paid a satellite station fee ... without any dispute from the Commission" even as Licensee acknowledges that "the only television satellite stations entitled to the benefit of the lesser satellite fees are those to which the Commission has issued a formal Rule 73.3555 Note 5 'satellite station waiver' of the FCC's duopoly rules."⁷ Licensee includes in its labeled "unresolved challenge" earlier *2014 Requests*⁸ asking the "Commission [to change its] regulatory fee records ... to reflect the television satellite status of [station call signs KUPT TV and KTEL-TV] and that the Demand Letter[s] be rescinded."⁹ As we discuss below, we dismiss the *Petition* because it is not filed with the Commission,¹⁰ Licensee combined requests requiring action by different bureaus and offices,¹¹ Licensee is delinquent in paying debts owed to the Commission,¹² and the *Petition* as moot because Licensee paid Bill No. R14T083707, which is the reason the Commission sent the *Jun. 2016 Demand Letter*. In the alternative, we deny the *Petition* because it does not warrant consideration by the Managing Director,¹³ and Licensee failed to establish grounds for a refund.¹⁴

⁴ *Id.* at 10.

⁵ *Id.* at 1. See e.g., Email from Dennis P. Corbett (DCorbett@lermansenter.com) to ARINQUIRIES (Nov. 24, 2014) (*2014 Request I*) with Attachment A, Advanced TV Factbook Listing for KUPT (TV), Attachment B, BIA Listing for KUPT (TV); email from Dennis P. Corbett (DCorbett@lermansenter.com) to ARINQUIRIES (Nov. 24, 2014) (*2014 Request II*) with Attachment A, Advanced TV Factbook Listing for KETL-TV, Nielsen TV Station Circulation, BIA Kelsey TV Analysis Report; Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20006-1809 to Department of the Treasury, Debt Management Services, Post Office Box 830794, Birmingham, AL 35283-0794 (Mar. 17, 2016) (*Letter*) with attachments (A) letter from Department of the Treasury, Bureau of the Fiscal Service, P.O. Box 830794, Birmingham, AL 35283-0794 to Ramar Communications Inc., 2000 K Street, NW, Suite 600, Washington, DC 20006 (Feb. 22, 2016) (*Feb. 22, 2016, Treasury Demand*) and (B) email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of *Feb. 22, 2016, Treasury Demand*; Letter from Dennis P. Corbett, Lerman Senter, PLLC, 2001 L Street NW, Suite 400, Washington, DC 20036 to Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 (Jun. 29, 2016) (*Letter II*) with Attachment A, Letter from Pioneer Credit Recovery, Inc., 26 Edward St., Arcade, NY 14009 to Ramar Communications, Atty Dennis P Corbett, 2000 K St., NW, Ste 600, Washington, DC 20006 (Jun. 2, 2016), email from Corbett, Dennis P. to ARINQUIRIES, FCC Washington, DC (Mar. 7, 2016) (*Email*) with summary of correspondence (*Summary*) and copy of *Feb. 22, 2016, Treasury Demand*.

⁶ *Petition* at 2.

⁷ *Id.* at 3.

⁸ *2014 Request I; 2014 Request II.*

⁹ *2014 Request I* at 2, *2014 Request II* at 2.

¹⁰ 47 C.F.R. §§ 1.106(i) & (p), 1.1159(b), and 1.1167(b) ("Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.").

¹¹ 47 C.F.R. § 1.44(d).

¹² 47 C.F.R. § 1.1164(e), 1.1167(b) ("filing of a petition for reconsideration ... of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment.")

¹³ 47 C.F.R. § 1.106(p).

¹⁴ 47 C.F.R. § 1.1160.

As a procedural matter, it is apparent from other records that Licensee's counsel has changed his mailing address; however, counsel should have but did not file an information change related to this proceeding.

Background

The Commission's records show that Licensee is delinquent in paying regulatory fees for Fiscal Year (FY) 2013 (Bill No. R13T027431) and FY 2014 (Bill No. BRF R 14T027431), and that those delinquent debts have been referred to the U.S. Department of the Treasury for collection action. Additionally, the Commission's records show that on June 22, 2016, licensee paid the balance owed on Bill No.: BRF R14T083707, which was the basis for both the *Oct. 2014 Demand Letter* and the *Jun. 2016 Demand Letter* (the subject of the *Petition*).

On June 22, 2016, Licensee submitted by "email to ARINQUIRIES@FCC.GOV in accordance with the instructions in the June 2016 Demand Letter"¹⁵ the pleading captioned as a "PETITION FOR RECONSIDERATION AND REQUEST FOR REFUND OF REGULATORY FEES." In the introductory section Licensee asks for "reconsideration of the June 7, 2016 Demand Letter [and a refund] of the FY 2014 regulatory fees ... (including all penalties and interest) ... paid,"¹⁶ and in its conclusion Licensee asks the Commission to: "(i) determine that for purposes of regulatory fees, the Station [KTEL-TV, Facility ID No. 83707] is a satellite station, entitled to pay the lower regulatory fee amount; (ii) change [Licensee's] red light status from 'red' to 'green;' and (iii) refund in full [Licensee's] payment of the FY2014 Bill."¹⁷ In between those two parts, Licensee asserts its reasons for refusing to pay the full amount of the annual regulatory fee.

Licensee asserts, "[a]t all times during the dispute, [Licensee] *timely remit[ted] payment of satellite station regulatory fees*, and then, in accordance with what it understands to be the FCC rules of the road governing error claims related to regulatory fees, filing timely written challenges to FCC demand for payment of higher non-satellite fees."¹⁸ Continuing, Licensee asserts, "for several years, [Licensee] paid a satellite station fee ... without any dispute from the Commission. However, the FY 2014 Bill invoices [Licensee] for the difference between a satellite station payment and the amount the station would be required to pay if not deemed a satellite."¹⁹ Even so, Licensee acknowledges, "only television satellite stations entitled to the benefit of the lesser satellite fees are those to which the Commission has issued a formal Rule 73.3555 Note 5 'satellite station waiver' of the FCC's duopoly rules."²⁰ Nonetheless, Licensee opines, that as far as it is aware, "the Commission has never given notice that only satellite stations that obtain a Note 5 duopoly waiver are entitled to the lower satellite station regulatory fee."²¹

¹⁵ *Petition* at 1.

¹⁶ *Id.*

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ *Id.* at 4.

On January 30, 2013, the Commission demanded that Licensee pay \$22,179.17 set forth in Bill No. R13T027431 (*FY 2013 Demand I*)²² (a debt currently at Treasury for collection), and the Commission provided Licensee with notice that it had 15 days in which to request an opportunity to inspect or copy debt-related records, to request an installment payment plan, or, as permitted by FCC rules, seek agency review of the basis of the debt. Specifically, the notice explained, to exercise “any of these rights, [the debtor] must, within the allowed time, deliver to the FCC’s address ... a written request (letter or email) specifying the nature of the request and providing relevant verified supporting documentation. After 15-days, [the debtor] will be deemed to have waived any right not exercised, and any notice that [debtor] may receive later does not extend or renew that period.”²³ On the same date, the Commission provided a demand for payment with the same notifications for the payment of Bill No. R13T083707 1,²⁴ (which Licensee paid on September 19, 2013). On October 28, 2014, the Commission demanded payment of Bill No. BRF R14T027431 1²⁵ (at Treasury for collection) and Bill No. BRF R14T083707 1.²⁶ These two demand letters provided Licensee 30 days to exercise the identified rights.

On March 7, 2016, Licensee submitted to the Commission’s staff an *Email* asserting it recently “learned that the Commission’s online LMS system [would] not accept [Licensee’s] application[, and that] the block [was] related to [Licensee’s delinquent] regulatory fee bills.”²⁷ Continuing, Licensee asserted it “has consistently been paying regulatory fees for KTEL-TV and KUPT based on their recognized status within the television industry as satellite stations and that [Licensee] has a long standing as yet unresolved challenge to the FCC’s position that [the] two stations should pay regulatory fees as if they were full power *non-satellite* stations.”²⁸ Licensee asserted, the so-called challenge has been of “substantial duration,” and as such, under 47 C.F.R. § 1.1910(b)(3)(i), the Commission’s procedure to withhold action on any application filed by a delinquent debtor should be should be deferred.²⁹ Licensee asserted that from its “informal discussions with [the Commission’s] Media Bureau,” Licensee “believe[s] that [the Commission] staff is taking the position that the only television satellite stations entitled to the benefit of the lesser satellite fees are those to which the Commission has issued a formal [waiver under 47 C.F.R. §] 73.3555 Note 5.”³⁰ Licensee, however, asserts it does not “need [a] Note 5 duopoly waiver” and it is Licensee’s “understanding that the Commission has historically consulted industry publications to determine whether a particular station qualifies as a satellite [and Licensee’s two stations] are listed as satellite stations in BIA’s database.”³¹

²² Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Jan. 30, 2014)(*FY 2013 Demand Letter I*).

²³ *Id.*

²⁴ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Jan. 30, 2014)(*FY 2013 Demand Letter II*).

²⁵ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Oct. 28, 2014)(*FY 2014 Demand Letter I*).

²⁶ Demand Letter, FCC, Washington, DC 20554 to Ramar Communications, Inc., 2000K Street, NW, Suite 600, Washington, DC 20006 (Oct. 28, 2014)(*FY 2014 Demand Letter II*).

²⁷ *Email* at 1.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 2.

³¹ *Id.*

Licensee asserts, the Commission's statement in the FY 2002 regulatory fee report and order, *i.e.*, "stations designated as Television Satellite Stations in the 2002 Edition of the *Television and Cable Factbook* ... are subject to the fee applicable to Television Satellite Stations," in Assessment and Collection of Regulatory Fees for Fiscal Year 2002, *Report and Order*, 17 FCC Rcd 13203, 13268 (2002), is "dispositive here."³² Notably, Licensee failed to include the balance of the cited text, *i.e.*,

Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of §73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of \$805 annually. Those stations designated as Television Satellite Stations in the 2002 Edition of the Television and Cable Fact book are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

Next, in its effort to establish disparate treatment, in the *Email*, Licensee "requests that FCC staff review broadly the Commission's regulatory fee database to determine the extent to which the universe of satellite stations that pay satellite fees ... also encompasses non-Note 5 stations that are listed as satellites in industry publications."³³ Beyond that approach, Licensee did not provide evidence supporting disparate fee payment, rather as Licensee asserted in the *2014 Requests and Email*, it is "reliant on the staff's obtaining this information," and from that, Licensee posits it is entitled to pay only a portion of the required annual regulatory fees for its stations.³⁴

Conspicuously, and contrary to Licensee's asserted self-determination, the *Television & Cable Factbook*, Volume 81, pp. A-843 and A-846 (2013) and *Television & Cable Factbook*, Volume 82, pp. A-849 and A-846 (2014) do not report either station KUPT or KTEL-TV as a satellite station.

The delinquent debts are unpaid portions of annual regulatory fees after Licensee unilaterally decided to pay a smaller fee amounts. Under 47 U.S.C. § 159 and the Commission's rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities.³⁵ When the required payment is received late or it is incomplete, under the law, the Commission automatically assesses a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³⁶ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."³⁷

³² *Id.*

³³ *Id.* at 2-3.

³⁴ *Id.* at 3.

³⁵ 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

³⁶ 47 U.S.C. §159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

³⁷ 47 C.F.R. § 1.1164.

Standards

The Commission's orders and rules include the well-established procedures for assessing and collecting annual regulatory fees, and procedures for filing applications at the Commission including, for example, petitions for declaratory relief, petitions to defer, waive, reduce, or refund a payment, petitions for reconsideration, and other matters seeking Commission action, and the consequences when a licensee fails to comply.³⁸

The Commission will consider a petition for reconsideration only when petitioner shows either a material error in the Commission's original order or raises changed circumstances or unknown additional facts not known or existing at the time of petitioner's last opportunity to present such matters.³⁹ See 47 C.F.R. § 1.106(d)(1) (petitions for reconsideration must "state with particularity the respects in which petitioner believes the action taken by the Commission ... should be changed") and 47 C.F.R. § 1.106(d)(2) (requiring petitioner to cite, where appropriate, "the findings [of fact] and/or conclusions [of law] which petitioner believes to be erroneous, and shall state with particularity the respects in which [the petitioner] believes such findings and/or conclusions should be changed"). Petitions for reconsideration that "plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s)."⁴⁰

Relevant to television station regulatory fees, television licensee are subject to the regulatory fee payment required for their class of station and market unless the station is a commonly owned television satellite station, authorized pursuant to Note 5 of 47 C.F.R. § 73.3555, that retransmits programming of the primary station.⁴¹ A television satellite station is a full power terrestrial broadcast station authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned.⁴² Licensees are expected to know these rules and procedures,⁴³ and the consequences for non-compliance including debt collection procedures. In that regard, a debt is "any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency."⁴⁴

³⁸ See 47 C.F.R. Part 1, e.g., Subparts A, G, and O, 47 C.F.R. §§ 1.2, 1.43, 1.44, 1.106, 1.1153, 1.1157, 1.1164, 1.1166.

³⁹ See 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

⁴⁰ 47 C.F.R. § 1.106(p).

⁴¹ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 F.C.C. Rcd. 5333, ¶ 82 (1994); Assessment & Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 F.C.C. Rcd. 13512, 13534 (1995) ("Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations"); Assessment & Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, 14 F.C.C. Rcd. 9868, 9936 (1999).

⁴² Television Satellite Stations Review of Policy Rules, *Report and Order*, 6 FCC Rcd 4212, ¶ 3 (1991) (*Satellite Station Review*).

⁴³ 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc.*, *Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

⁴⁴ 31 U.S.C. § 3701(b)(1); accord 31 C.F.R. § 900.2; 47 C.F.R. 1.1901(e).